2075 Woodside Road | Redwood City, CA 94061
(650) 260-0005 | peninsulacleanenergy.com

Regular Meeting of the Board of Directors of the Peninsula Clean Energy Authority (PCEA)
AGENDA
Thursday, April 27, 2023
6:30 p.m.

PLEASE NOTE: This meeting will be held in a hybrid format with both in-person and Zoom participation options for members of the public; Board members shall appear in person

In-Person Meeting Locations:
PCEA Lobby, **2075 Woodside Road, Redwood City, CA 94061**
Los Banos City Hall, **Conference Room A, 520 J Street, Los Banos, CA 93635**
The Foundry Hotel Asheville, Room TBD, **51 S Market St, Asheville, NC 28801**

Zoom, **Virtual Meeting Link:** https://pencleanenergy.zoom.us/j/82772843517
Meeting ID: 827-7284-3517 **Passcode:** 2075 **Phone:** +1(669) 444-9171

This meeting of the Board of Directors will be held at the Peninsula Clean Energy Lobby: 2075 Woodside Road, Redwood City, CA 94061 and Los Banos City Hall, Conference Room A, 520 J Street, Los Banos, CA 93635 and by teleconference pursuant to California Assembly Bill 2449 and the Ralph M. Brown Act, CA Gov't Code. Section 54950, et seq. **Members of the Board are expected to attend the meeting in person** and should reach out to Assistant General Counsel for Peninsula Clean Energy, Jennifer Stalzer, with questions or accommodation information (jstalzer@smcgov.org). For information regarding how to participate in the meeting remotely, please refer to the instructions at the end of the agenda. In addition, a video broadcast of the meeting can be viewed at https://www.peninsulacleanenergy.com/board-of-directors following the meeting.

Public Participation

The PCEA Board meeting may be accessed through Zoom online at https://pencleanenergy.zoom.us/j/82772843517. The meeting ID is: 827-7284-3517 and the passcode is 2075. The meeting may also be accessed via telephone by dialing +1(669) 444-9171. Enter the webinar ID: 827-7284-3517, then press #. (Find your local number: https://pencleanenergy.zoom.us/u/kTlH1Ocod). Peninsula Clean Energy uses best efforts to insure audio and visual clarity and connectivity. However, it cannot guarantee the connection quality.

Members of the public can also attend this meeting physically at the **Peninsula Clean Energy Lobby** at 2075 Woodside Road, Redwood City, CA 94061 or **Los Banos City Hall**, Conference Room A, 520 J Street, Los Banos, CA 93635 or **The Foundry Hotel Asheville**, Room TBD, 51 S Market St, Asheville, NC 28801.

Written public comments may be emailed to PCEA Board Clerk, Nelly Wogberg (nwogberg@peninsulacleanenergy.com) and such written comments should indicate the specific agenda item on which the member of the public is commenting.

Spoken public comments will be accepted during the meeting in the Board Room(s) or remotely through Zoom at the option of the speaker. Please use the "Raise Your Hand" function in the Zoom platform, or press *6 if you phoned into the meeting, to indicate that you would like to provide comment. Public comments via Zoom will be taken first followed by speakers in person.

ADA Requests

Individuals who require special assistance or a disability related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting, should contact Nelly Wogberg, Board Clerk, by 10:00 a.m. on the day before the meeting at (nwogberg@peninsulacleanenergy.com). Notification in advance of the meeting will enable PCEA to make reasonable arrangements to ensure accessibility to this meeting, the materials related to it, and your ability to comment.

Closed Captioning is available for all PCEA Board meetings. While watching the video broadcast in Zoom, please enable captioning.

CALL TO ORDER / ROLL CALL/ APPROVE TELECONFERENCE PARTICIPATION UNDER AB 2449

This item is reserved to approve teleconference participation request for this meeting by Director pursuant to Brown Act revisions of AB 2449 due to an emergency circumstance to be briefly described.

PUBLIC COMMENT

This item is reserved for persons wishing to address the Committee on any PCEA-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. Members of the public who wish to address the Board are customarily limited to two minutes per speaker. The Board Chair may increase or decrease the time allotted to each speaker.

ACTION TO SET AGENDA AND TO APPROVE CONSENT AGENDA ITEMS

1. Approval of the Minutes for the November 17, 2022 and December 15, 2022 Board of Directors Meetings

2. Approval of an Amendment to the Agreement with Darren Goode to Provide Professional Services Through May 31, 2024, Increasing the Amount by $112,000 for a Total Not-to-Exceed Amount of $554,000

3. Approval of Contract Delegating Authority to the Chief Executive Officer to Execute an Amendment with The Center for Sustainable Energy (CSE) to Reduce the Incentives Funds that CSE will Manage from $8 Million to $4 Million

4. Approval of a Consulting Agreement Between the Peninsula Clean Energy Authority and Janis C. Pepper to Provide Consulting Services Beginning August 1, 2023, in an Amount Not-to-Exceed $180,000

5. Approval of Appointment of Andrew Stern as Interim Chief Financial Officer and Interim Treasurer

REGULAR AGENDA

6. Chair Report (Discussion)

7. CEO Report (Discussion)

8. Citizens Advisory Committee Report (Discussion)

9. Approval of Diversity, Equity, Accessibility, and Inclusion (DEAI) Related Amendments to the Strategic Plan, Policy 9 and Policy 10 (Action)

10. Approval of Resolution Delegating Authority to Chief Executive Officer to Execute Energy Storage Service Agreement for an Energy Storage Project with Lockhart ESS, LLC, and any Necessary Ancillary Documents with a Power Delivery Term of 15 Years Starting at the Commercial Operation Date on or About June 1, 2024, in an Amount Not-to-Exceed $142 Million (Action)

11. Adopt a Resolution Approving Plan to Delay Compliance with Uploading Time Varying Rates to the Market Informed Demand Automation Server (MIDAS) Database (Action)

12. Discussion on Sunset of Net Energy Metering (NEM) 2.0 and Transition to NEM 3.0/Net Billing (Discussion)

13. Board Members' Reports (Discussion)

INFORMATIONAL REPORTS

14. Update on Marketing, Outreach Activities, and Account Services

15. First Quarter (Q1) 2023 Media Relations Summary

16. Update on Regulatory Policy Activities

17. Update on Legislative Activities

18. Update on Community Energy Programs

19. Update on Energy Supply Procurement

20. Report on California Community Power (CCP) Joint Powers Authority

21. Industry Acronyms and Terms

ADJOURNMENT

Public records that relate to any item on the open session agenda are available for public inspection. The records are available at the Peninsula Clean Energy offices or on PCEA's Website at: https://www.peninsulacleanenergy.com.

Instructions for Joining a Zoom Meeting via Computer or Phone

Best Practices:

- Please mute your microphone when you are not speaking to minimize audio feedback
- If possible, utilize headphones or ear buds to minimize audio feedback
- If participating via videoconference, audio quality is often better if you use the dial-in option (Option 2 below) rather than your computer audio

Options for Joining

A. **Videoconference with Computer Audio – see Option 1 below**
B. **Videoconference with Phone Call Audio– see Option 2 below**
C. **Calling in via Telephone/Landline – see Option 3 below**

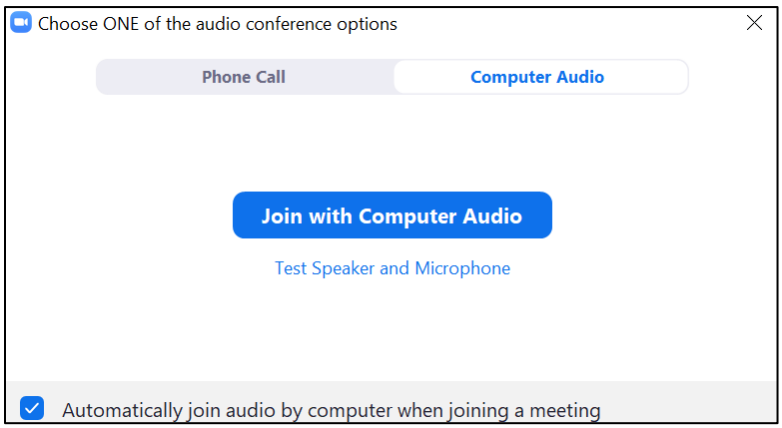
Videoconference Options:

Prior to the meeting, we recommend that you install the Zoom Meetings application on your computer by clicking here https://zoom.us/download.

If you want full capabilities for videoconferencing (audio, video, screensharing) you must download the Zoom application.

Option 1 Videoconference with Computer Audio:

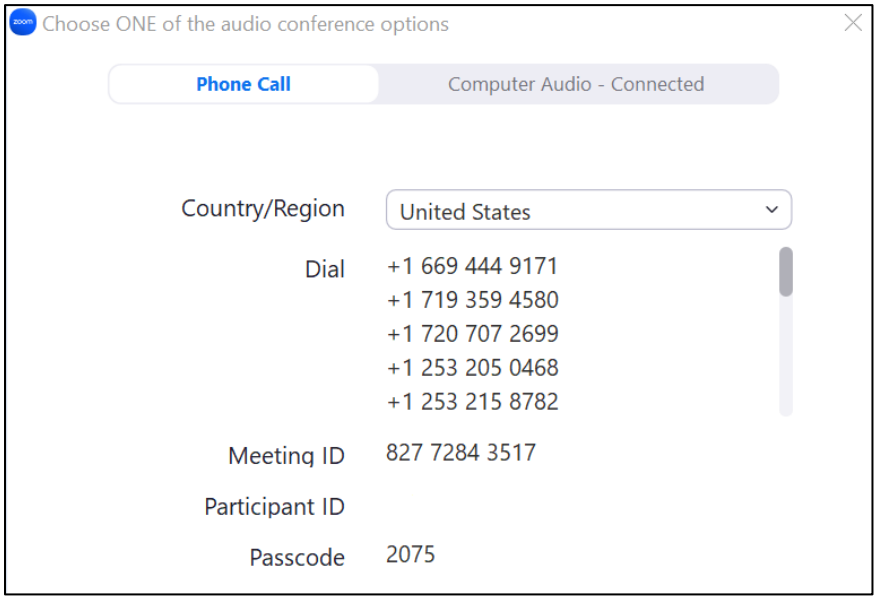
1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: https://pencleanenergy.zoom.us/j/82772843517
2. The Zoom application will open on its own or you will be instructed to open Zoom.
3. After the application opens, the pop-up screen below will appear asking you to choose ONE of the audio conference options. Click on the Computer Audio option at the top of the pop-up screen.



4. Click the blue, “Join with Computer Audio” button.
5. In order to enable video, click on “Start Video” in the bottom left-hand corner of the screen. This menu bar is also where you can mute/unmute your audio.

Option 2 Videoconference with Phone Call Audio:

1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: https://pencleanenergy.zoom.us/j/82772843517
2. The Zoom Application will open on its own or you will be instructed to Open Zoom.



3. After the application opens, the pop-up screen below will appear asking you to choose ONE of the audioconference options. Click on the Phone Call option at the top of the pop-up screen.
4. Please dial +1(669) 444-9171
5. You will be instructed to enter the meeting ID: **827-7284-3517 followed by #**
6. You will be instructed to enter in your participant ID. Your participant ID is unique to you and is what connects your phone number to your Zoom account
7. After a few seconds, your phone audio should be connected to the Zoom application on your computer
8. In order to enable video, click on “Start Video” in the bottom left-hand corner of the screen. This menu bar is also where you can mute/unmute your audio

Audio Only Options:

Please note that if you call in/use the audio only option, you will not be able to see the speakers or any presentation materials in real time.

Option 3: Calling in via Telephone/Landline:

1. Dial +1(669) 444-9171
2. You will be instructed to enter the meeting ID: **827-7284-3517 followed by #**
3. You will be instructed to enter your **Participant ID** followed by #. If you do not have a participant ID or do not know it, you can press # to stay on the line
4. You will be instructed to enter the meeting passcode **2075 followed by #**

Regular Meeting of the Board of Directors of the Peninsula Clean Energy Authority (PCEA)
Minutes

Thursday, November 17, 2022
6:30 p.m.
Zoom Video Conference and Teleconference

CALL TO ORDER

Meeting was called to order at 6:39 p.m. in virtual teleconference.

SWEARING IN OF NEW BOARD MEMBER

Jennifer Stalzer, Associate General Counsel, presided over the official swearing-in of new Board Member Ken Gonzalez from the City of Colma.

ROLL CALL

Participating Remotely:

Donna Colson, Burlingame, *Vice Chair*
Ken Gonzalez, Colma
Carlos Romero, East Palo Alto, arrived at 6:51 p.m.
Patrick Sullivan, Foster City
Harvey Rarback, Half Moon Bay
Betsy Nash, Menlo Park
Anders Fung, Millbrae
Jeff Aalfs, Portola Valley
Giselle Hale, Redwood City
Marty Medina, San Bruno
John Dugan, San Carlos
Rick Bonilla, San Mateo
Jennifer Wall, Woodside
Laurence May, Hillsborough, arrived at 7:39 p.m.

Pradeep Gupta, Director Emeritus
John Keener, Director Emeritus

Absent:

Dave Pine, San Mateo County
Warren Slocum, San Mateo County
Rick DeGolia, Atherton, *Chair*
Julia Mates, Belmont
Coleen Mackin, Brisbane
Roderick Daus-Magbual, Daly City
Tom Faria, Los Banos
Tygarjas Bigstyck, Pacifica
James Coleman, South San Francisco

A quorum was established.

PUBLIC COMMENT

None

ACTION TO SET THE AGENDA AND APPROVE REMAINING CONSENT AGENDA ITEMS

Vice Chair Colson noted that Agenda Item Number 5, "Approval of Seventh Amended and Restated Agreement Between Peninsula Clean Energy Authority and Chief Executive Officer" is on the Regular Agenda.

MOTION: Director Bonilla moved, seconded by Director Hale to set the Agenda, and approve Agenda Item Numbers 1-4.

1. Adopt Findings Pursuant to AB 361 to Continue Fully Teleconferenced Committee Meetings Due to Health Risks Posed by In-Person Meetings

2. Approval of the Minutes for the October 27, 2022 Meeting

3. Approval of Contract With EV.Energy for the EV Managed Charging Pilot for a Total of $220,000 Over 2 Years

4. Approval of Amended Remote Work Policy in Employee Handbook

MOTION PASSED: 12-0 (Absent: San Mateo County, San Mateo County, Atherton, Belmont, Brisbane, Daly City, East Palo Alto, Hillsborough, Los Banos, Pacifica, South San Francisco)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine				X
San Mateo County	Director Slocum				X
Atherton	Director DeGolia				X
Belmont	Director Mates				X
Brisbane	Director Mackin				X
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual				X
East Palo Alto	Director Romero				X
Foster City	Director Sullivan	X			
Half Moon Bay	Director Rarback	X			
Hillsborough	Director May				X
Los Banos	Director Faria				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck				X
Portola Valley	Director Aalfs	X			
Redwood City	Director Hale	X			
San Bruno	Director Medina	X			

San Carlos	Director Dugan	X			
San Mateo	Director Bonilla	X			
South San Francisco	Director Coleman				X
Woodside	Director Wall	X			
	Totals	12			11

REGULAR AGENDA

6. Chair Report

Vice Chair Colson shared a recap of the November 7, 2022 Executive Committee Meeting and asked for volunteers for a subcommittee discussing the Directors Emeriti positions. Vice Chair Colson also shared an update on the Energy Summit at the Haas Business School and recognized departing Board Members Rick Bonilla, Tom Faria, Giselle Hale, Larry May, and Laura Parmer-Lohan.

7. CEO Report

Jan Pepper, Chief Executive Officer, gave a report including a staffing update, information on Net Energy Metering (NEM) 3.0, Power Charge Indifference Adjustment (PCIA), an update on the Solar + Storage on Public Buildings program, an update on the Assembly election and AB 361, and recognizing retiring Board Members.

Vice Chair Colson announced that Agenda Item Number 5, "Approval of Seventh Amended and Restated Agreement Between Peninsula Clean Energy Authority and Chief Executive Officer" would be heard following the Citizens Advisory Committee Report.

8. Citizens Advisory Committee Report

Cheryl Schaff, Citizens Advisory Committee (CAC) Chair, gave a report on the November 3, 2022 Citizens Advisory Committee meeting including the CAC unanimously passing staff's recommendation to deliver 100% renewable energy annually on a 99% time-coincident basis by 2025.

5. Approval of Seventh Amended and Restated Agreement Between Peninsula Clean Energy Authority and Chief Executive Officer

Vice Chair Colson introduced this item recognizing Jan Pepper's excellent service and leadership to Peninsula Clean Energy and shared that a closed session was held at the October 27, 2022 Board of Directors meeting where this item was discussed in more detail.

MOTION: Director Bonilla moved, seconded by Director Romero to approve a Seventh Amended and Restated Agreement with Janis C. Pepper, modifying the end date of to June 30, 2023 with the possibility of an extension; and (2) providing a two-stage increase in her annual base salary to $406,000 effective July 1, 2022 and $425,000 effective January 1, 2023.

MOTION PASSED: 13-0 (Absent: San Mateo County, San Mateo County, Atherton, Belmont, Brisbane, Daly City, Hillsborough, Los Banos, Pacifica, South San Francisco)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine				X
San Mateo County	Director Slocum				X

Atherton	Director DeGolia				X
Belmont	Director Mates				X
Brisbane	Director Mackin				X
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual				X
East Palo Alto	Director Romero	X			
Foster City	Director Sullivan	X			
Half Moon Bay	Director Rarback	X			
Hillsborough	Director May				X
Los Banos	Director Faria				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck				X
Portola Valley	Director Aalfs	X			
Redwood City	Director Hale	X			
San Bruno	Director Medina	X			
San Carlos	Director Dugan	X			
San Mateo	Director Bonilla	X			
South San Francisco	Director Coleman				X
Woodside	Director Wall	X			
	Totals	13			10

9. Approval of Audited Financials for Fiscal Year End 2022 (Action)

Kristina Cordero, Chief Financial Officer, gave a presentation on the audited financial statements for Fiscal Year 2021-2022 including auditor conclusions and summary.

MOTION: Director Bonilla moved, seconded by Director Romero to Approve the Audited Financial Statements for Fiscal Year 2021-2022.

MOTION PASSED: 13-0 (Absent: San Mateo County, San Mateo County, Atherton, Belmont, Brisbane, Daly City, Hillsborough, Los Banos, Pacifica, South San Francisco)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine				X
San Mateo County	Director Slocum				X
Atherton	Director DeGolia				X
Belmont	Director Mates				X
Brisbane	Director Mackin				X
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual				X
East Palo Alto	Director Romero	X			
Foster City	Director Sullivan	X			
Half Moon Bay	Director Rarback	X			

Hillsborough	Director May				X
Los Banos	Director Faria				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck				X
Portola Valley	Director Aalfs	X			
Redwood City	Director Hale	X			
San Bruno	Director Medina	X			
San Carlos	Director Dugan	X			
San Mateo	Director Bonilla	X			
South San Francisco	Director Coleman				X
Woodside	Director Wall	X			
	Totals	13			10

10. Adopt Staff's Recommendation on Delivering 100% Renewable Energy annually on a 99% Time-Coincident Basis (Action)

Mehdi Shahriari, Planning and Analytics Manager, gave a presentation on Staff's recommendation for delivering 100% renewable energy annually on a 99% time-coincident basis including the modeling approach, renewable goal scenarios, the new capacity required to add to Peninsula Clean Energy's portfolio, the cost of time-coincident procurement, emissions reductions in hourly carbon intensity, reduction in system net peak, and real-time operations on time-coincident performance.

MOTION: Director Hale moved, seconded by Director Bonilla to adopt staff's recommendation to deliver 100% renewable energy annually on a 99% time-coincident basis by 2025.

Director Sullivan asked if there was another way of energy sources that could develop a portfolio that wouldn't see a declining return. Mehdi explained that the analysis is based on market condition snapshots which are ever changing. Director Sullivan asked if different forms of energy could be substituted into the portfolio. Mehdi explained that there are some emerging technologies, such as offshore wind, which could help to reduce cost in the future, but that this analysis was only done to the year 2025.

Director Emeritus Keener pointed out that buying energy for 100% renewable time-coincident requires greatly overbuying energy.

Public Comment: Tom Kabat

Jan Pepper, Chief Executive Officer, commented that Peninsula Clean Energy will still be doing transactions with others as we buy and sell electricity.

Director Emeritus Keener commented that 2/3 of the cost of electricity is transmission and delivery costs paid to PG&E.

MOTION RESTATED: Director Hale moved, seconded by Director Bonilla to adopt staff's recommendation to deliver 100% renewable energy annually on a 99% time-coincident basis by 2025.

MOTION PASSED: 14-0 (Absent: San Mateo County, San Mateo County, Atherton, Belmont, Brisbane, Daly City, Los Banos, Pacifica, South San Francisco)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine				X
San Mateo County	Director Slocum				X
Atherton	Director DeGolia				X
Belmont	Director Mates				X
Brisbane	Director Mackin				X
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual				X
East Palo Alto	Director Romero	X			
Foster City	Director Sullivan	X			
Half Moon Bay	Director Rarback	X			
Hillsborough	Director May	X			
Los Banos	Director Faria				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck				X
Portola Valley	Director Aalfs	X			
Redwood City	Director Hale	X			
San Bruno	Director Medina	X			
San Carlos	Director Dugan	X			
San Mateo	Director Bonilla	X			
South San Francisco	Director Coleman				X
Woodside	Director Wall	X			
	Totals	14			9

11. Board Members' Reports

None

ADJOURNMENT

Meeting was adjourned at 7:52 p.m.

Regular Meeting of the Board of Directors of the Peninsula Clean Energy Authority (PCEA)
Minutes

Thursday, December 15, 2022
6:30 p.m.
Zoom Video Conference and Teleconference

CALL TO ORDER

Meeting was called to order at 6:34 p.m. in virtual teleconference.

ROLL CALL

Participating Remotely:

Dave Pine, San Mateo County
Rick DeGolia, Atherton, *Chair*
Donna Colson, Burlingame, *Vice Chair*
Ken Gonzalez, Colma
Roderick Daus-Magbual, Daly City
Sam Hindi, Foster City
Harvey Rarback, Half Moon Bay
Betsy Nash, Menlo Park
Elmer Martinez Saballos, Redwood City
Jeff Aalfs, Portola Valley
Marty Medina, San Bruno
James Coleman, South San Francisco

John Keener, Director Emeritus

Absent:

Warren Slocum, San Mateo County
Julia Mates, Belmont
Coleen Mackin, Brisbane
Carlos Romero, East Palo Alto
Laurence May, Hillsborough
Tom Faria, Los Banos
Anders Fung, Millbrae
Tygarjas Bigstyck, Pacifica
Laura Parmer-Lohan, San Carlos
Rick Bonilla, San Mateo
Jennifer Wall, Woodside

Pradeep Gupta, Director Emeritus

A quorum was established.

PUBLIC COMMENT

Tom Kabat

ACTION TO SET THE AGENDA AND APPROVE REMAINING CONSENT AGENDA ITEMS

MOTION: Director Medina moved, seconded by Director Rarback to set the Agenda, and approve Agenda Item Numbers 1-4.

1. Adopt Findings Pursuant to AB 361 to Continue Fully Teleconferenced Committee Meetings Due to Health Risks Posed by In-Person Meetings

2. Approval of the 2023 Board of Directors Schedule of Meetings

3. Approval of an Agreement Between the San Mateo County Attorney's Office and the Peninsula Clean Energy Authority for Provision of Legal Services, in an Amount Not-to-Exceed $800,000, for a Term Ending February 29, 2024, and Accompanying Conflict Waiver
4. Approval of Contract Amendment No. 4 with David Fribush to Increase the Contract Amount by $150,000 to a Total Not-to-Exceed of $525,000 and to Extend the Term of the Agreement to December 31, 2023

MOTION PASSED: 12-0 (Absent: San Mateo County, Belmont, Brisbane, East Palo Alto, Hillsborough, Los Banos, Millbrae, Pacifica, San Carlos, San Mateo, Woodside)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Slocum				X
Atherton	Director DeGolia	X			
Belmont	Director Mates				X
Brisbane	Director Mackin				X
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual	X			
East Palo Alto	Director Romero				X
Foster City	Director Hindi	X			
Half Moon Bay	Director Rarback	X			
Hillsborough	Director May				X
Los Banos	Director Faria				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung				X
Pacifica	Director Bigstyck				X
Portola Valley	Director Aalfs	X			
Redwood City	Director Martinez Saballos	X			
San Bruno	Director Medina	X			

San Carlos	Director Parmer-Lohan				X
San Mateo	Director Bonilla				X
South San Francisco	Director Coleman	X			
Woodside	Director Wall				X
	Totals	12			11

REGULAR AGENDA

5. Chair Report

Chair DeGolia marked a large change in membership on the Board of Directors and the Executive Committee. Chair DeGolia announced appointing Director Romero as an interim member of the Executive Committee leaving two open positions.

6. CEO Report

Jan Pepper, Chief Executive Officer, gave a presentation including staffing updates, regulatory updates, an update on the Sacramento legislature, an update on the power purchase agreement with the CalWind Wind Resource 1 project, an update on the Solar + Storage on Public Buildings project, and a request for additional membership on the legislative and marketing subcommittees.

7. Citizens Advisory Committee Report

Cheryl Schaff, Citizens Advisory Committee (CAC) Chair, gave a recap of the December 1, 2022 CAC meeting including information on the Inflation Reduction Act and a recap of Peninsula Clean Energy achievements.

Vice Chair Colson asked if there are any openings on the CAC. Kirsten Andrews-Schwind, Senior Manager of Community Relations, explained that the CAC is fully staffed.

8. Recognition for 2022 Departing Board Members (Discussion)

Chair DeGolia recognized Rick Bonilla, Larry May, Joe Goethals, Rae Gonzalez, Giselle Hale, Laura Parmer Lohan, Tom Faria, Carole Groom, and Charles Stone for their time served on the Peninsula Clean Energy Board of Directors.

Jan Pepper, Chief Executive Officer, Director Pine, and Shawn Marshall, Chief Operating Officer, shared recollections and appreciation of outgoing Board Members. Director Bonilla, Director May, Director Goethals, and Ken Gonzalez on behalf of Rae Gonzalez, accepted and reflected on time spent on the Peninsula Clean Energy Board of Directors.

9. Approval of new Peninsula Clean Energy Rates, to be Effective February 1, 2023 with a Minimum Net 5% Discount in Generation Charges for ECOplus Compared to PG&E Generation Rates, Effective January 1, 2023 (Action)

Leslie Brown, Director of Account Services, shared a presentation on the Peninsula Clean Energy Ratemaking process including maintaining the 5% value proposition to new customers, information on a negative Power Charge Indifference Adjustment (PCIA), and PCIA vintages.

MOTION: Vice Chair Colson moved, seconded by Director Medina to Approve a Resolution authorizing staff to calculate and implement new Peninsula Clean Energy ECOplus rates to be effective February 1, 2023 to reflect changes to PG&E rates effective January 1, 2023. Peninsula Clean Energy staff will calculate two new sets of rates ensuring a minimum net 5% discount relative to January 1, 2023 PG&E generation rates.

MOTION PASSED: 12-0 (Absent: San Mateo County, Belmont, Brisbane, East Palo Alto, Hillsborough, Los Banos, Millbrae, Pacifica, San Carlos, San Mateo, Woodside)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Slocum				X
Atherton	Director DeGolia	X			
Belmont	Director Mates				X
Brisbane	Director Mackin				X
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual	X			
East Palo Alto	Director Romero				X
Foster City	Director Hindi	X			
Half Moon Bay	Director Rarback	X			
Hillsborough	Director May				X
Los Banos	Director Faria				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung				X
Pacifica	Director Bigstyck				X
Portola Valley	Director Aalfs	X			
Redwood City	Director Martinez Saballos	X			
San Bruno	Director Medina	X			
San Carlos	Director Parmer-Lohan				X
San Mateo	Director Bonilla				X
South San Francisco	Director Coleman	X			
Woodside	Director Wall				X
	Totals	12			11

10. Approval of Long-Term Resource Adequacy Agreement with PG&E (Action)

Jeff Wright, Power Resources Manager, gave a presentation including background on resource adequacy, background on the agreement with PG&E, contract structure, and risks and benefits of the agreement.

MOTION: Director Medina moved, seconded by Director Daus-Magbual to Approve the Resolution Delegating Authority to Chief Executive Officer to Execute a Master Power Purchase and Sale Agreement Resource Adequacy Confirmation Letter with Pacific Gas and Electric Company and any necessary ancillary documents with a Resource Adequacy Delivery Term of 15 years beginning on January 1, 2024, in an amount not to exceed $10 million.

MOTION PASSED: 12-0 (Absent: San Mateo County, Belmont, Brisbane, East Palo Alto, Hillsborough, Los Banos, Millbrae, Pacifica, San Carlos, San Mateo, Woodside)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Slocum				X
Atherton	Director DeGolia	X			
Belmont	Director Mates				X
Brisbane	Director Mackin				X
Burlingame	Director Colson	X			
Colma	Director Gonzalez	X			
Daly City	Director Daus-Magbual	X			
East Palo Alto	Director Romero				X
Foster City	Director Hindi	X			
Half Moon Bay	Director Rarback	X			
Hillsborough	Director May				X
Los Banos	Director Faria				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung				X
Pacifica	Director Bigstyck				X
Portola Valley	Director Aalfs	X			
Redwood City	Director Martinez	X			
San Bruno	Director Medina	X			
San Carlos	Director Parmer-Lohan				X
San Mateo	Director Bonilla				X
South San Francisco	Director Coleman	X			
Woodside	Director Wall				X
	Totals	12			11

11. Discussion on Proposed Net Energy Metering (NEM) 3.0 Decision

Jeremy Waen, Director of Regulatory Policy, gave a presentation including the history of Net Energy Metering (NEM), political tensions within NEM reform, a comparison between the initial proposed decision and the revised proposed decision, and a summary of the joint Community Choice Aggregation (CCA) advocated changes.

Chair DeGolia asked if export compensation is the largest difference between NEM 2.0 and NEM 3.0, and also if export compensation only addressed the generation from rooftop solar that is exported to the grid in excess of what that customer uses from the grid, and if that is calculated over a year-long time period. Jeremy explained that there is an annual truing up of energy consumed versus supplied to the grid. NEM 3.0 is using an annualized netting process but will be sensitive to hours of the day energy is pulled or supplied to the grid. Jeremy explained there are different ways to deploy a solar system, you can offset your own demand during the day, or, especially with storage, you can prioritize to put back as much power as possible during the high value hours.

Chair DeGolia asked for clarification if customers could create an export compensation by offloading energy during peak hours when annually, they have an annualized deficit. Jeremy explained that part of the netting process in the annualized netting where there are non-passable charges customers

have to pay based on how much power is pulled from the grid. Jeremy explained if customers aren't exporting at a high amount, much of what is created during the year off-sets the non-passable charges.

Vice Chair Colson expressed her gratitude to Jeremy Waen and Marc Hershman, Director of Government Affairs, for their help with a letter sent from the City of Burlingame. She requested information that can be shared with constituents following the December 15, 2022 California Public Utilities Commission (CPUC) meeting. Jeremy explained that a redline document was released yesterday by the CPUC and that tomorrow there will likely be an official document that can be shared with constituents.

Director Emeritus Keener asked if there were changes to the allowable size of individual customer rooftop arrays. Jeremy explained that customers are allowed to oversize their arrays by up to 50% and that there are changes to the language relating to this on the technicalities of how one does that, including that the 50% threshold can be determined from the previous year of use.

Director Pine asked if Peninsula Clean Energy will reconsider their own NEM pricing policies and if prior policies were successful in attracting more solar customers. Jeremy explained that Peninsula Clean Energy's premium is in line with other CCAs and that adapting the premium to be time-based is something that CCAs can work together on to come to a common structure.

Jan Pepper shared the founding board member photo from 6 years ago. Jan also noted that there will be social media posts planned regarding the spike in gas prices starting tomorrow to Twitter and Facebook followers.

12. Board Members' Reports (Discussion)

Director Pine wanted to note that Justin Pine has joined Peninsula Clean Energy and is not of relation to Dave Pine.

Betsy Nash asked if the Twitter gas price info could be sent via email to board members. KJ Janowski, Director of Marketing and Community Relations explained that those posts will be shared with Nelly Wogberg, Board Clerk, who will forward them to the Board.

ADJOURNMENT

Meeting was adjourned at 8:14 p.m.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: April 14, 2023
BOARD MEETING DATE: April 27, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Gwen Rose, Director of Marketing and Community Relations

SUBJECT: Authorize an Amendment to the Agreement with Darren Goode to provide professional services through May 31, 2024, increasing the amount by $112,000 for a total not to exceed amount of $554,000.

RECOMMENDATION:
Authorize an Amendment to the Agreement with Darren Goode to provide professional services through May 31, 2024 and to increase the contract amount by $112,000 for a total not to exceed amount of $554,000.

BACKGROUND:
Peninsula Clean Energy has ongoing needs for media relations strategy and execution to support one of the Marketing and Customer Care objectives in the board-approved Strategic Plan 2020-2025 which states: “Elevate Peninsula Clean Energy’s brand reputation as a trusted leader in the community and the industry.” Media relations work, in general, aims to ensure that Peninsula Clean Energy is known, trusted, and that Peninsula Clean Energy communicates with, engages, and persuades stakeholders to take action on individual decisions and policy stances.

DISCUSSION:
In December 2019 Peninsula Clean Energy and Darren Goode executed an agreement for media relations strategy and execution. The initial services agreement was for $90,000 for a term of 6 months from December 4, 2019 through June 3, 2020.

In April 2020, Peninsula Clean Energy and Mr. Goode executed an amendment to the agreement to extend the term to May 31, 2021 and in an amount not to exceed $245,000.

In May 2021, Peninsula Clean Energy and Mr. Goode executed an amendment to the agreement to extend the term to May 31, 2022 and in an amount not to exceed $330,000.

In April 2022, Peninsula Clean Energy and Mr. Goode executed an amendment to the agreement to extend the term to May 31, 2023, and in an amount not to exceed $442,000.

The current term of the agreement will end on May 31, 2023, but it is the desire of the parties to continue receiving/providing those professional services. Therefore, it is requested that an additional $112,000 be added to the agreement with a retroactive effective date of April 1, 2023 and for the agreement term to be extended to May 31, 2024.

PCEA desires to extend the agreement with Mr. Goode based on the value of his unique media relations support. He has provided such support since December 2019. He has a valuable skill set and direct experience in public relations and reporting in the fields of energy and the environment.

STRATEGIC PLAN:

Objective A of the Marketing, Community Outreach & Customer Care section of the Strategic Plan 2020-2025 reads “Brand Reputation: Elevate Peninsula Clean Energy’s brand reputation as a trusted leader in the community and the industry.” Key tactics to support this objective include:

1. Position leadership as experts on CCAs and the industry
2. Cultivate relationships with industry media and influencers
3. Tell the story of Peninsula Clean Energy through diverse channels

The scope of work for this contract addresses all three of these tactics in support of Objective A.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO,

STATE OF CALIFORNIA

*** * * * * ***

RESOLUTION APPROVING EXECUTION OF AN AMENDMENT TO THE AGREEMENT WITH DARREN GOODE FOR MEDIA RELATIONS STRATEGY IN AN AMOUNT NOT TO EXCEED $554,000 AND EXTENDING THE TERM THROUGH MAY 31, 2024

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California ("Peninsula Clean Energy" or "PCE"), that

WHEREAS, PCE was formed on February 29, 2016; and

WHEREAS, in December 2019, PCE and Darren Goode ("Contractor") executed an agreement for media relations strategy and execution in an initial amount of $90,000; and

WHEREAS, in April 2020, PCE and Contractor executed an amendment to that agreement for an amount not to exceed $245,000 which extended the term to May 31, 2021; and

WHEREAS, in May 2021, PCE and Contractor executed an amendment to that agreement for an amount not to exceed $330,000 which extended the term to May 31, 2022; and

WHEREAS, in April 2022, PCE and Contractor executed an amendment to that agreement for an amount not to exceed $442,000 which extended the term to May 31, 2023; and

WHEREAS, Contractor has been providing media relations services to PCE since December 2019; and

WHEREAS, Contractor has unique capabilities to provide media relations support to PCE;

WHEREAS, staff is presenting to the Board for its review an amendment to the agreement with Contractor to increase the amount by $112,000 for a total not to exceed amount of $554,000 and to extend the term through May 31, 2024; and

WHEREAS, reference should be made to the amendment to the agreement accompanying this resolution for further particulars; and

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute the aforementioned amendment to the Agreement.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board approves execution of an amendment to the agreement with Darren Goode for Media Relations Strategy and in an amount not to exceed $554,000 and extending the term through May 31, 2024.

* * * * * *

AMENDMENT TO AGREEMENT
BETWEEN THE PENINSULA CLEAN ENERGY AUTHORITY AND
DARREN GOODE

THIS AMENDMENT TO THE AGREEMENT, entered into this 1st day of April 2023, by and between the Peninsula Clean Energy Authority, a joint powers authority of the state of California, hereinafter called "PCEA," and Darren Goode, hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Section 6508 of the Joint Exercise of Powers Act, PCEA may contract with independent contractors for the furnishing of services to or for PCEA;

WHEREAS, the parties entered into an Agreement for media relations strategy and execution services on December 4, 2019; and

WHEREAS, the parties wish to amend the Agreement to extend the term of the agreement and the maximum fiscal obligation by $112,000 through May 31, 2024; and

WHEREAS, the parties wish to replace Exhibit A "Services" and Exhibit B "Rates and Billing"

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Section 2 of the Agreement is amended to read as follows:

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, PCEA shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. PCEA reserves the right to withhold payment if PCEA determines that the quantity or quality of the work performed is unacceptable. In no event shall PCEA's total fiscal obligation under this amendment exceed $554,000. In the event that PCEA makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by PCEA at the time of contract termination or expiration.

2. Section 3 of the Agreement is replaced as follows:

Subject to compliance with all terms and conditions, the term of this agreement shall be from December 4, 2019 through May 31, 2024.

3. Original Exhibit A is replaced with attached Revised Exhibit A (rev. 4/15/22).

4. Original Exhibit B is replaced with attached Revised Exhibit B (rev. 4/15/22).

All other terms and conditions of the agreement dated December 4, 2019 between PCEA and Contractor shall remain in full force and effect.

For Contractor: DARREN GOODE

_____	_____	_____
Contractor Signature	Date	Contractor Name (please print)

PENINSULA CLEAN ENERGY AUTHORITY

By:

Chief Executive Officer, Peninsula Clean Energy Authority

Date:

Exhibit A (revised 4/15/22)

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

1. **Provide ongoing media relations strategy and execution, guidance and counsel to Peninsula Clean Energy officials, including:**
    - Serving as Peninsula Clean Energy's spokesperson and media contact
    - Responding to media inquiries and advising Peninsula Clean Energy staff and board members on responses (including talking points and other training as needed) and further engagement
    - Providing advice and communications strategy for crisis communication
    - Preparing, overseeing and executing media announcements
    - Assisting in special communications projects, on an as-needed basis, such as formulating messaging for materials used by Peninsula Clean Energy regulatory/legislative team and Peninsula Clean Energy lobbyist
    - Providing input on media coverage for the weekly board newsletter and for the Peninsula Clean Energy website
    - Tracking performance vs. Key Performance Indicators agreed-upon with Director of Marketing and reporting monthly on activities, accomplishments and opportunities and draft a quarterly media relations summary for PCEA Board of Directors
2. **Conduct media outreach, including:**
    - Building Peninsula Clean Energy's visibility in the media so that the views of the agency's leaders can be influential in the industry and among policy makers in the State of California
    - Supporting Peninsula Clean Energy's efforts to influence state and local policy through direct media outreach, earned and owned content and other collaboration with communications staff representing elected officials and other policymakers
    - Building thought leadership profile of CEO and other relevant Peninsula Clean Energy officials and board members by showcasing them in press releases and other media outreach opportunities, op-eds, blogs and other content
    - Maintaining and updating media and influencer lists
    - Monitoring relevant media coverage of Peninsula Clean Energy and other relevant industry topics
    - Monitoring opportunities for third-party cross-promotional and collaboration opportunities including coordinating with other CCAs and other third-party collaborators, including potentially coordinating with PR professionals who may be engaged by a coalition of local CCAs
3. **Produce and oversee production of content, specifically:**
    - Writing press releases and associated social media content
    - Original, ghostwritten Peninsula Clean Energy blogs or affiliated op-eds of an approximate range of 300-1,000 words each as needed

- Other potential content that also centers on the key messages of Peninsula Clean Energy providing cleaner, cheaper power than PG&E, while reinvesting heavily in our communities

4. **Leverage event opportunities, including:**
    - Identifying speaking opportunities; assisting in developing and submitting speaking proposals
    - Publicizing major events organized by Peninsula Clean Energy

Exhibit B – Rates and Billing

Fixed monthly billing for provision of services described in Exhibit A, at a retainer of $8,000, billed in arrears.

PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: Apr. 17, 2023
BOARD MEETING DATE: Apr. 27, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy
Rafael Reyes, Director of Energy Programs

SUBJECT: Approval of Contract Amendment with Center for Sustainable Energy for EV incentive administration reducing the budget to $4 million

RECOMMENDATION

Delegate authority to the Chief Executive Officer to refine and execute contract amendment with the Center for Sustainable Energy (CSE) for administration of PCE incentives within the California Electric Vehicle Incentive Project (CALeVIP). The amendment reduces the total PCE incentive funds CSE will administer from $8 million to $4 million.

BACKGROUND

Peninsula Clean Energy's mission is to reduce greenhouse gas (GHG) emissions by expanding access to sustainable and affordable energy solutions. In December 2018, the Board approved the Electric Vehicle Charging Infrastructure Incentive Program, a 4-year $16 million program intended to accelerate the deployment of electric vehicle charging infrastructure in San Mateo County, to open the EV market via charging access, and to provide an extended term to support scaled planning and execution.

In August 2019, the Board approved a contract with CLEAResult for technical assistance service to property owners in PCE territory. PCE was subsequently successful in attracting an additional $12 million to San Mateo County from the California Energy Commission (CEC) through the CALeVIP program – increasing the available incentive pool to $24 million. CALeVIP provides a co-funded program including incentive funds from CEC and also from PCE as match funding. In October 2019, the Board approved the contract with CSE for administration of $8 million in PCE incentive funding to be administered through CALeVIP.

DISCUSSION

CALeVIP launched in San Mateo County in December 2020. PCE incentive funds were segmented into 3 tranches, with the first year funded at $4 million targeting level 2 charging in workplaces, public and multi-family properties. All funds were immediately reserved for approximately 800 ports.

The program has encountered numerous challenges including significant pandemic related issues with contractors, supply-chain, permitting and other factors. To date the CALeVIP program has installed 146 ports in San Mateo County. CSE also experienced additional challenges with staff turnover and other factors. This included issues with customer complaints, slow processing times, communications issues, and numerous delays associated with subsequent phases of the program.

PCE engaged CSE on service deficiencies over many months, including dialogue with the CEC. In mid-2022, the CEC acknowledged the service deficiencies and noted that previously set targets were unlikely to be met at which point PCE notified CSE and the CEC its intention to withdraw from continued participation in the program.

PCE negotiated a transition wherein CSE would continue to administer the rebates for projects already reserved but any unspent funds would return to PCE. PCE has redirected the balance of funds intended for CALeVIP to its own incentive management under the PCE EV Ready program.

The amendment addresses the changed committed funds and includes modest adjustments to associated administrative costs and additional terms previously required by the CEC that do not have a material effect on PCE's program or funds.

FISCAL IMPACT

Program changes are expected reduce administrative costs and increase the number of ports PCE will deploy.

STRATEGIC PLAN

Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 1: Drive personal electrified transportation towards majority adoption

Goal 3 – Community Energy Programs, Objective B:

- Key Tactic 1: Invest in programs that benefit underserved communities

ATTACHMENTS

- Contract Amendment
- Original Contract (for reference)
- Resolution

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN AMENDMENT WITH THE CENTER FOR SUSTAINABLE ENERGY TO REDUCE THE INCENTIVES FUNDS THAT CSE WILL MANAGE FROM $8 MILLION TO $4 MILLION

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

WHEREAS, PCE was formed on February 29, 2016; and

WHEREAS, supporting electric vehicle charging infrastructure is an important component to accelerate EV adoption reducing greenhouse gas emissions and improving the local economy; and

WHEREAS, PCE board approved the Electric Vehicle Charging Infrastructure Program in December 2018 which included $12 million for EV Infrastructure Incentives,

WHEREAS, the California Energy Commission selected San Mateo County as California Electric Vehicle Incentive project area to receive $12 million in 2020; and

WHEREAS, in 2020 the PCE board approved an agreement with the Center for Sustainable Energy (CSE), the selected project administrator by the California Energy

Commission to include up to $8 million in PCE funds for incentives to be administered by CSE; and

WHEREAS, PCE has determined that PCE can more efficiently administer the remaining portion of the incentives; and

WHEREAS, PCE desires to enter into an Amendment that reduces the total PCE incentive funds that CSE will administer from $8 million to $4 million;

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to finalize and execute the aforementioned Amendment

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to finalize and execute, in a form approved by the General Counsel, the amendment with CSE to reduce the total incentives funding that CSE will manage on behalf of PCE to a maximum of $4 million.

* * * * * *

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN AMENDMENT WITH THE CENTER FOR SUSTAINABLE ENERGY TO PROVIDE PROJECT ADMINISTRATION FOR ELECTRIC VEHICLE CHARGING INCENTIVES REDUCING THE INCENTIVES FUNDS TO $4 MILLION

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

WHEREAS, PCE was formed on February 29, 2016; and

WHEREAS, supporting electric vehicle charging infrastructure is an important component to accelerate EV adoption reducing greenhouse gas emissions and improving the local economy; and

WHEREAS, PCE board approved the Electric Vehicle Charging Infrastructure Program in December 2018 which included $12 million for EV Infrastructure Incentives,

WHEREAS, the California Energy Commission selected San Mateo County as California Electric Vehicle Incentive project area to receive $12 million in 2020; and

WHEREAS, in 2020 the PCE board approved an agreement with the Center for Sustainable Energy (CSE), the selected project administrator by the California Energy

Commission to include up to $8 million in PCE funds for incentives to be administered by CSE; and

WHEREAS, PCE has determined that PCE can more efficiently administer the remaining portion of the incentives; and

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to finalize and execute the aforementioned Amendment

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to finalize and execute, in a form approved by the General Counsel, the amendment with CSE to reduce the total incentives funding PCE will provide for CSE administration to a maximum of $4 million.

* * * * * *

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PENINSULA CLEAN ENERGY STANDARD SERVICES AGREEMENT

This **Agreement** is made by and between Peninsula Clean Energy Authority ("**PCE**") and Center for Sustainable Energy (hereinafter "**CONTRACTOR**"), a California nonprofit corporation with its principal place of business located at 3980 Sherman Street, Suite 170, San Diego, CA 92110. PCE and CONTRACTOR may be individually referred to herein as "**Party**" or collectively as "**Parties**."

WHEREAS the California Energy Commission ("**CEC**") approved funding for up to $200 million (the "**CALeVIP Funding**") for the design and implementation of an electric vehicle charger investment incentive project. CONTRACTOR has accepted the CALeVIP Funding under the terms and conditions of that certain Grant Agreement (ARV-16-017) effective as of June 27, 2017 (the "**Grant Agreement**").

WHEREAS CEC has authorized CONTRACTOR to deploy CALeVIP Funding (the "**CEC Funds**"), of $12,000,000, towards an incentive project in San Mateo County (the "**San Mateo County Incentive Project**").

WHEREAS PCE provides locally controlled, carbon-free electricity to residents and businesses in its service territory in San Mateo.

WHEREAS PCE desires to promote more rapid deployment of public and private infrastructure that will accelerate adoption of electric vehicles in its service territory. Funding that is to be provided by PCE to support such promotion (the "**Client Funds**") will be identified, through the annual budget cycle to be approved by the PCE Policy Board meeting. Client Funds will be used to grant incentive payments ("**Incentive Payments**") to public and private property owners and business owners that install electric vehicle chargers that meet specific standards in its service territory.

WHEREAS PCE desires to hire CONTRACTOR to develop and administer the San Mateo County Incentive Project in consideration of payment of a fee in accordance with the terms and conditions set forth herein.

Agreement

NOW THEREFORE, in consideration of the covenants and conditions set forth in this Agreement, the Parties agree as follows:

1. GENERAL DESCRIPTION

1.1. PCE hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A (the "**Services**") in conformity with the terms of this Agreement.

1.2. PCE has secured or will secure Client Funds in the amount of $8,000,000.

2. Payment Provisions

2.1. **Payment for** Services. As compensation for Services, PCE shall pay CONTRACTOR a fee (the "**Services Fee**") in accordance with the payment provisions set forth in Exhibit B (*Payment Terms*).

2.2. **Payment of Client Funds for Incentive Payments.** Client Funds other than the Services Fee shall be transferred to Contractor in accordance with Part 8 of the Scope of Services set forth in Exhibit A.

3. TERM OF AGREEMENT

3.1. The term of this Agreement is from the Effective Date until **June 30, 2024** ("Term"), unless sooner terminated pursuant to the terms of this Agreement.

4. SCOPE OF SERVICES AND ADDITIONAL PROVISIONS

4.1. The following attached exhibits are incorporated herein by reference and constitutes a part of this Agreement:

4.1.1. Exhibit A: Scope of Services

4.1.2. Exhibit B: Payment Terms

4.1.1. Exhibit C: Pillar Requirements

4.1.2. Exhibit D: Peninsula-Silicon Valley Incentive Project Rebate Amounts

5. PROPRIETY RIGHTS

5.1. **Licensed Services**. PCE shall have a limited, non-exclusive, and non-transferable right during the Term to access and use the Services within PCE's Service Territory, subject to the terms and conditions of this Agreement. The Services and Deliverables may be used by PCE only in connection with the San Mateo County Incentive Project. PCE shall have no right to copy, in whole or in part, the Services and PCE shall not, and shall not permit any third party to, modify, adapt, translate, reverse engineer, decompile, disassemble, sublicense, redistribute, resell, rent, lease, remove any copyright or other proprietary notice from, or create derivative works based on the Services, or extract any component thereof for use with any other systems, applications, data or materials, or use or reproduce any part of the Services in source-code format. Further, PCE shall not access, use or exploit the Services (in whole or in part) in order to build, develop (or commission the development of), or consult upon any product or service which competes (directly or indirectly) with the Services. PCE agrees that its access to and use of any software components, data, applications and/or related materials owned and controlled by third parties that interoperate with or are otherwise made available in connection with the Services (collectively, "**Third Party Materials**") may be subject to separate terms and conditions as may be imposed from time to time by the third party involved. Nothing in this paragraph, nor paragraph 5.2, shall restrict PCE from developing, implementing, or managing its own rebate program, independent of those services provided by CSE.

5.2. **Ownership of Services**. Except for the license to access and use the Services expressly granted to PCE under this Agreement, CONTRACTOR retains all right, title, and interest in the Services, whether as individual items or a combination of components and whether or not the Services are completed, regardless of any participation or collaboration by PCE in their design, development or implementation. CONTRACTOR has the sole right to obtain, hold, and renew in its own name and for its own benefit, any patents, copyrights, registrations, and other similar intellectual

property and proprietary rights protections regarding any Services. PCE shall reasonably cooperate with CONTRACTOR and execute all documents necessary to enable CONTRACTOR to perfect, preserve, register, and record its rights in the Services. Except for the limited rights and licenses granted to PCE under this Agreement, nothing shall be construed to restrict, impair, encumber, alter, deprive, or adversely affect the Services or any of CONTRACTOR's rights or interests therein. All rights not expressly granted to PCE hereunder are reserved by CONTRACTOR.

5.3. **PCE Materials**. PCE shall reasonably cooperate with CONTRACTOR in the performance of the Services, including by promptly providing CONTRACTOR with all PCE and third party trademarks, trade names, service marks, logos, names, and distinctive identification (collectively, "**PCE Trademarks**"), information, materials, data, images, and content required to perform the Services (collectively, "**PCE Materials**"). PCE hereby grants to CONTRACTOR a non-exclusive, non-sublicensable, and non-transferable right and license to use the PCE Materials and PCE Trademarks as provided by PCE to CONTRACTOR hereunder for the duration of the Agreement and solely in connection with the performance of the Services. All goodwill resulting from CONTRACTOR's use of the PCE Trademarks shall inure to the benefit of PCE. Without limiting the foregoing, PCE hereby grants to CONTRACTOR a non-exclusive, non-sublicensable, non-transferable right, and license to use any data inputted or uploaded by PCE in connection with the Services and any data generated from PCE's use of the Services, including information and data regarding PCE's customers (collectively, the "**PCE Data**"); *provided that* PCE Data excludes customers' protected personal information as specifically defined by "Covered Information" in Attachment B, of CPUC Decision D-12-08.045 (collectively, "**Customer Data**"). This protection shall include but is not limited to customer usage data. As between PCE and CONTRACTOR, PCE retains all right, title, and interest in the PCE Materials, PCE Trademarks, and PCE Data, except for the limited rights and licenses granted to CONTRACTOR under this Agreement.

5.4. **Use of Data**. PCE hereby grants to CONTRACTOR a license to use the PCE Data for the duration of the CONTRACTOR's contract with the California Energy Commission for the implementation of the California Electric Vehicle Incentive Project as described in Exhibit A to this Agreement including, but not limited to: (i) for data analysis and market research purposes as described by the SOW **and** (ii) to improve and enhance the Services. PCE also grants CONTRACTOR the ability to disclose the data described by (i) and (ii) to CEC as required under the Grant Agreement, and to disclose the data described by (i) and (ii) solely in aggregate or other de-identified form in connection with its business, including for benchmarking purposes and providing market reports and studies to third parties.

5.5. **Data Security**. CONTRACTOR shall implement appropriate technological, physical, and administrative safeguards designed to protect the PCE Data and Customer Data from unauthorized access, use or disclosure. Such safeguards shall include measures designed to prevent access, use, modification or disclosure of PCE Data and Customer Data by CONTRACTOR personnel except (a) to provide the Services, (b) as authorized by this Agreement, including without limitation, as required by applicable law, or (c) as otherwise authorized by PCE in writing.

6. PERFORMANCE STANDARDS

6.1. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced,

competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of PCE or immediate family of an employee of PCE.

6.2. CONTRACTOR and CONTRACTOR's agents, employees and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

6.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use PCE premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

7. LIMITED WARRANTY. CONTRACTOR warrants to PCE that the Services will be performed in a professional and workmanlike manner and in accordance with the specifications provided in the Scope of Work in all material respects. In the event of a breach of the warranty set forth in this Section 7, CONRACTOR agrees, as CONRACTOR's sole and exclusive obligation and PCE's sole and exclusive remedy, to use commercially reasonable efforts to re-perform the defective Services or to modify or correct the defective deliverable, as applicable, at its sole costs and expense.

8. <u>REPRESENTATIONS AND WARRANTIES</u>

8.1. **Mutual Representations and Warranties**. Each Party represents and warrants to the other Party that (a) it has the right, power, and authority to enter into this Agreement and to perform the acts and grant such rights required of it under this Agreement, (b) the execution, delivery, and performance of this Agreement by such Party has been duly authorized by all necessary organizational governance action and violates no applicable law to which it is subject, (c) the execution of this Agreement and performance of its obligations under this Agreement do not and shall violate no other agreement to which it is a party, and (d) this Agreement constitutes the legal, valid, and binding obligation of such Party when executed and delivered by each Party.

8.2. **PCE Materials and Trademarks.** PCE represents and warrants that (a) it owns the PCE Materials and PCE Trademarks and/or controls all necessary rights and licenses required for CONTRACTOR's use of the PCE Materials and PCE Trademarks as set forth in this Agreement, (b) the PCE Materials and PCE Trademarks, and CONTRACTTOR's use thereof as contemplated hereunder, shall violate no applicable laws or misappropriate, violate, or infringe upon the intellectual property, privacy, publicity, or other proprietary rights of any third party, and (c) the PCE Materials shall not contain any content that is false, misleading, defamatory, or obscene.

8.3. **Conflict of Interest.** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.

8.4. **NO OTHER** WARRANTIES. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES AND THE PARTIES HEREBY DISCLAIM ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES REGARDING ANY SERVICES (INCLUDING THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY PARTICULAR RESULT WILL BE OBTAIN

BY USE OF THE SERVICES), DELIVERABLES, INFORMATION, CONTENT, PRODUCTS OR MATERIALS FURNISHED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

9. PAYMENT CONDITIONS

9.1. Invoices shall be submitted to PCE in accordance with Exhibit B, on a form reasonably acceptable to PCE and provide sufficient detail, as reasonably determined by PCE, of services rendered for the invoiced period.

9.2. PCE shall confirm the accuracy of invoices and promptly notify CONTRACTOR if the applicable "Event" did not occur or if the invoice is otherwise incorrect or deficient and if necessary, CONTRACTOR shall resubmit invoices only in conformity with this Agreement. Invoices shall be paid within 30 days of submission of a correct invoice to PCE.

10. TERMINATION

10.1. PCE may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. In such event, PCE may pursue available legal or equitable remedies for breach.

10.2. CONTRACTOR may cancel and terminate this Agreement for good cause effective immediately upon written notice to PCE. "Good cause" includes the failure of PCE to pay CONSULTANT when due. CONSULTANT must provide PCE with a "Notice of Dispute" and have met and conferred as provided in Section 17.5.1 below. In such event, CONTRACTOR may pursue available legal or equitable remedies for breach.

10.3. PCE may terminate this Agreement at any time and for any reason by providing thirty (30) days written notice to CONTRACTOR.

10.4. In the event of termination or cancellation for any reason, including expiration of the Agreement term pursuant to paragraph (3) above, any remaining portion of **Client Funds** not reserved under this Agreement shall be returned to PCE within 45 days of the date of termination. In the event of termination for convenience, any Client Funds previously reserved for existing applications shall continue to be incurred.

11. INDEMNIFICATION; LIMITATION OF LIABILITY

11.1. **Mutual Indemnification.** Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold the other Party (the "**Indemnified Party**"), harmless, at the Indemnifying Party's own cost and expense, from and against any and all liabilities, losses, damages, injuries, judgments, amounts paid in settlement, costs and expenses, including reasonable attorneys' fees and costs, arising out of or related to any third party claim resulting from any material breach of any of the Indemnifying Party's representations or warranties specifically set forth in Article 8 of this Agreement. The Indemnifying Party shall solely conduct the defense of any such claim

and all negotiations for its settlement; *provided that* (a) no settlement shall be agreed to without the Indemnified Party's prior written approval, and (b) the Indemnified Party has the right to participate, at its own expense, in the defense and/or settlement of any such claim in order to protect its own interests.

11.2. **Infringement Indemnification**. CONTRACTOR shall indemnify, defend with counsel approved by PCE, and hold PCE harmless from and against all claims, losses, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys' fees) resulting from any claim that the Services infringe on the United States patent, trademark, trade name, trade secret, or copyright of any third party, provided CONTRACTOR is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance. CONTRACTOR shall not settle such suit or action without the express written consent of PCE. The foregoing obligations do not apply regarding portions or components of the Service (i) not supplied by CONTRACTOR, (ii) made in whole or in part in accordance with PCE specifications, (iii) that are modified after delivery by CONTRACTOR, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where PCE continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where PCE use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by CONTRACTOR to be infringing, CONRACTOR may, at its option and expense (a) replace or modify the Service to be non-infringing; *provided that* such modification or replacement contains substantially similar features and functionality, (b) obtain for PCE a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and PCE's rights hereunder and provide PCE a refund of any prepaid, unused fees for the applicable Services.

11.3. **Limitations of Liability**. EXCEPT IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS IN ARTICLE 11, OR A PARTY'S GROSS NEGLIGENCE OR FRAUD, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS, OR LOSS OF DATA, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR THE BASIS OF THE CLAIM OR WHETHER OR NOT THE APPLICABLE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. INSURANCE REQUIREMENTS

12.1. Prior to commencement of this Agreement, the CONTRACTOR shall provide a "Certificate of Insurance" certifying as to the insurance coverages that CONTRACTOR has obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies. The CONTRACTOR shall not begin work under this Agreement until PCE has approved all required insurance. This approval of insurance shall neither relieve nor decrease the liability of the CONTRACTOR

12.2. All coverages shall be issued by companies acceptable to PCE and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California and holding a current policyholder's alphabetic, and financial size category A.M. Best rating of

not less than A- VII. Any insurer, or policy, not meeting the requirements set forth in this Paragraph 12.2 must be approved by PCE's Chief Executive Officer.

12.3. Without limiting CONTRACTOR's duty to defend and indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

12.3.1. **Commercial General Liability Insurance,** including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, and cross-liability with a combined single limit for Bodily Injury and Property Damage of not less than $1,000,000 per occurrence, and $2,000,000 in the aggregate.

12.3.2. **Business Automobile Liability Insurance,** covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than $500,000 per occurrence.

12.3.3. **Workers' Compensation Insurance,** if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability Limits not less than $1,000,000 each person, $1,000,000 each accident and $1,000,000 each disease.

12.4. All insurance required by this Agreement shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

12.5. Each liability policy shall provide that PCE shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

12.6. Commercial general liability and automobile liability policies shall provide an endorsement naming Peninsula Clean Energy Authority, its Directors, Board members, officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by PCE and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR's insurance.

13. RECORDS AND CONFIDENTIALITY

13.1. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, as well as CPUC Decision D-12-08-045, which provide for

the confidentiality of records and other information. CONFIDENTIAL INFORMATION shall include, but shall not be limited to, all customer data. Excepting the use of data per Section 5.4 above, CONTRACTOR shall not disclose any confidential records or other confidential information received from PCE or prepared in connection with the performance of this Agreement, unless PCE specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to PCE any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

13.2. At the request of PCE, CONTRACTOR shall return to PCE any PCE records which CONTRACTOR used or received from PCE to perform services under this Agreement.

13.3. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and local rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action. Relating to. this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.

13.4. PCE shall have the right to examine, monitor, and audit all records, documents, conditions, and activities of the CONRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of $10,000, the parties to this Agreement may be subject, at the request of PCE or as part of any audit of PCE, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

13.5. **Grant Agreement**. Nothing in Article 13 shall prohibit CONTRACTOR from complying with its obligations under the Grant Agreement.

13.6 Agreement and California Public Records Act. The parties understand that the content of this Agreement is subject to disclosure pursuant to the California Public Record Act, California Government Code Section 5230 et seq.

14. NON-DISCRIMINATION

14.1. During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

15. INDEPENDENT CONTRACTOR

15.1. In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of PCE. No offer or obligation of permanent employment with PCE and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from PCE any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance, or disability benefits. CONTRACTOR shall be solely liable and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold PCE harmless from any and all liability which PCE may incur because of CONTRACTOR's failure to pay such taxes.

16. Notices

16.1. All notices and other communications required or permitted under this Agreement shall be in writing and delivered personally, mailed via a nationally recognized overnight courier or sent via email correspondence (with confirmation of receipt), to the applicable Party at the addresses set forth below, unless, by notice, a Party changes or supplements the addressee and addresses for giving notice. All notices shall be deemed given on the date personally delivered, when placed in the mail as specified or upon confirmation of email receipt.

If to CONTRACTOR:

Center for Sustainable Energy
Attn: Notice Officer
3980 Sherman Street, Suite 170
San Diego, CA 92210
Email: legal@energycenter.org

If to PCE:

Peninsula Clean Energy
Attn: Jan Pepper
2075 Woodside Road
Redwood City, CA
jpepper@peninsulacleanenergy.com

17. MISCELLANEOUS PROVISIONS

17.1. Force Majeure. Notwithstanding anything to the contrary herein, except regarding a Party's payment obligations, neither Party shall be in breach of this Agreement or incur any liability to the other in connection with any failure to perform any of its obligations hereunder to the extent that performance of such obligations is prevented or materially hindered by reason of strikes, lockouts, restrictive governmental or judicial orders or

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decrees, riots, insurrection, war, acts of God or any other reason or event reasonably beyond a Party's control.

17.2. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by PCE and the CONTRACTOR.

17.3. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by PCE and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions of this Agreement.

17.4. Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.

17.5. Disputes. Without prejudice to Section 10.3, CONTRACTOR shall continue to perform under this Agreement during any dispute.

17.5.1. Any dispute regarding the payment of fees shall be subject to a meet and confer between the Parties to be conducted no more than 15 days from the date of a "Notice of Dispute" is provided subject to Section 17 above.

17.6. Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of PCE. None of the services covered by this Agreement shall be subcontracted or delegated to third parties without the prior written consent of PCE, which consent shall not be unreasonably withheld or denied. Should PCE not approve or reject any such subcontracting or delegation with ten days of notice, such subcontracting or delegation shall be deemed approved. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

17.7. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of PCE and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

17.8. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

17.9. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

17.10. Time is of the Essence. Time is of the essence in each and all provisions of this Agreement.

17.11. Governing Law. The Agreement shall be governed by and interpreted under the laws of the State of California.

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17.12. Non-exclusive Agreement. This Agreement is non-exclusive and both PCE and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

17.13. Construction of Agreement. PCE and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

17.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

17.15. Authority. Any individual executing this Agreement on behalf of PCE or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

17.16. Integration. This Agreement, including the Exhibits, represent the entire Agreement between PCE and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between PCE and the CONTRACTOR as of the effective date of this Agreement, which is the date that PCE signs the Agreement.

17.17. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this main body of this Agreement and the provisions of any Exhibit to this Agreement, the provisions of this main body of this Agreement shall prevail and control. If there is a conflict or discrepancy between the Grant Agreement and any other part of this Agreement, the terms of the Grant Agreement shall without exception control and govern to the extent of conflict.

[*signature page follows]*

IN WITNESS WHEREOF, the Parties hereto have set their hands the day and year first above written.

Center for Sustainable Energy

By: DocuSigned by: Lawrence E. Goldenhersh 58F5EFF4297C491...

PRINT NAME: Lawrence E. Goldenhersh

ITS: President

Peninsula Clean Power

By: Janis C. Pepper

PRINT NAME: Jan Pepper

ITS: Chief Executive Officer

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Exhibit A
Scope of Services

1. TASK 1: INCENTIVE PROJECT DESIGN

1.1. The goal of this task is to work with Peninsula Clean Energy to design a targeted incentive Project in San Mateo County.

1.2. Center for Sustainable Energy incentive design work will consist of:

(a) Research and analysis of EV charger incentive Project opportunities along the following parameters:

a. Market opportunities to incentivize the deployment of EV chargers;

b. Expected or potential demand for EV chargers;

c. Currently available EV charger incentives relevant to proposed project;

d. Low Carbon Fuel Standard (LCFS) credits as available incentive (any LCFS credits captured by partners are not required to be invested into CALeVIP);

e. Attainable policy objectives (e.g., disadvantaged communities, low income / priority populations);

f. Budget constraints and opportunities;

g. Funding source requirements;

h. Definition of applicant eligible for Incentive Payments funded by PENINSULA CLEAN ENERGY; and

i. Other relevant project design variables that are developed in the course of the design sessions and included by amendment in this section 1.2(a).

(b) In consultation with the Peninsula Clean Energy, create a targeted incentive design covering:

a. Geographic region targeted by the incentives;

b. Eligible sites definition (e.g., destination, workplace, multi-unit dwellings, corridors, disadvantaged communities, etc.);

c. Eligible applicant definition;

d. Minimum technical requirements for eligible EV charging equipment;

(1) Amount of incentive by type of EV charger;

e. Funding source(s) utilized for each type of incentive;

(1) Total amount of incentive funding allocated to the project;

(2) Incentive structure (e.g., Incentive Payments system disbursing incentives after chargers are installed, or other appropriate incentive);

f. Peninsula-Silicon Valley Incentive Project goals;

g. Anticipated Peninsula-Silicon Valley Incentive Project roll-out and administration schedule;

(1) Definition of charger data to be collected and methodology for collecting the data;

h. Application support services consisting of CONTRACTOR staffed help desk to respond via phone and email to applicant eligibility and application process questions;

i. Application documentation requirements;

j. Development of Applicant Terms and Conditions and inclusion of Terms and Conditions in contract with user. Terms and Conditions shall include, but shall not be limited to:

- Eligible types of equipment;
- Eligible sites;
- Performance requirements;
- "Clawback Requirement" ensuring that an applicant return to PCE any disbursed PCE funds in the event that the applicant's project is determined by PCE to be non-compliant with program requirements. PCE understands and acknowledges that, in the event of a Clawback, it shall be responsible for the recoupment of funds, including, but not limited to, investigation and associated costs. CSE shall, in the event that it identifies a potentially fraudulent application, immediately notify PCE and shall cooperate in PCE's Clawback process by providing PCE all of the information collected via Task 5 herein. However, CSE shall not recoup funds on behalf of PCE, bear responsibility for investigation of suspected non-compliance, associated costs and fees, and any legal claims related to the Clawback process; and
- Language requiring automatic "opt in" by all participants to PCE's to-be-developed Load Shaping Program(s). PCE shall develop a description of "opt out" procedures for applicants also to be referenced in the Terms and Conditions.

k. Execution of Installation Verification Procedures including but not limited to: a) collection of documents such as permits, inspection cards, and photographs, b) review of such documents for compliance and assessment of possible fabrication or misrepresentation in such documents, and c) communications with permitting jurisdictions if further validation is mutually determined to be where deemed necessary; and

l. Internal processes and controls, processes and procedures to do the following: receive, handle, and account for and manage incentive funding, including funding from multiple sources; receive and evaluate incentive requests; effect payment for valid Incentive Payments requests; and provide monthly fiscal accounting and reporting to Peninsula Clean Energy.

1.3. **Deliverables**:

(a) Final Incentive Design Package to capture the results of work specified in Section 1.2.

(b) Project Implementation Manual, consisting of

a. Eligibility requirements

(1) Equipment categories

(2) Equipment eligibility criteria

(3) Eligible costs

(4) Eligible sites

(5) Incentive Payments amounts

(6) Maximum Incentive Payments limits per entity

b. Applicant duties

(1) Applicant requirements

(2) Research participation

(3) Application process

(4) Installation and operation requirements

(5) Applicant Terms and Conditions

(6) Installation Verification Procedures

(7) Installation data

(8) Usage data

2. TASK 2: DEVELOPMENT AND CONFIGURATION OF INCENTIVE PROCESSING WEBSITE

2.1. The goal of this task is to design, develop, configure, and launch a robust, user-friendly project website.

2.2. The Peninsula-Silicon Valley Incentive Project Landing Page will include:

(a) A funding visualization, including the amount of funding available and remaining amounts for each technology, within each County.

(b) Instructions, forms and FAQs to parties interested in participating in the Peninsula-Silicon Valley Incentive Project.

(c) Technology requirements, funding amounts for each specific technology and description of eligible locations.

(d) Description of eligible costs under the Peninsula-Silicon Valley Incentive Project.

(e) Application process description and diagram.

(f) Attribution of the Peninsula-Silicon Valley Incentive Project to Peninsula Clean Energy and the California Energy Commission.

2.3. The online application will include:

(a) The ability for interested parties to indicate if they are customers of Peninsula Clean Energy.

(b) The ability for interested parties to review and agree to Applicant Terms and Conditions.

(c) The ability for interested parties to submit required documents to participate in Peninsula-Silicon Valley Incentive Project, including application forms, payment requests, and appropriate documentation.

2.4. The user and application dashboards will include:

(a) The capability for incentive participants to access, in real time, the status of incentive applications and payments.

(b) The capability for incentive participants to designate collaborators on their application for purposes of authorizing others to track and submit information on their behalf.

2.5. **Deliverables**:

(a) Peninsula-Silicon Valley Incentive Project Landing Page design and content

(b) San Mateo specific Audience Landing Page design and content specified in collaboration with Peninsula Clean Energy

(c) Online application form and process

(d) User and application dashboards

(e) Ongoing system maintenance and minor adjustments

3. TASK 3: EV CHARGER INCENTIVE PROJECT MARKETING AND TECHNICAL ASSISTANCE

3.1. The goal of this task is to consistently market the Peninsula-Silicon Valley Incentive Project to relevant target audiences, and to provide basic support to applicants to file applications and pursue their EV charging installation projects. To accomplish this CONTRACTOR will:

(a) Develop an Integrated Communications Plan for the Peninsula-Silicon Valley Incentive Project. The plan will identify the goals of the marketing and outreach effort, target audience(s), methods/tactics/channels to be used, and will include a schedule to coordinate the marketing activities. For San Mateo County, the plan will focus mostly on paid digital tactics and channels (consistent with Santa Clara County) and will be tied tightly to Peninsula Clean Energy's marketing and technical assistance effort. All specifics in the Integrated Communications Plan will be developed collaboratively with PCE and require PCE approval.

(b) Develop marketing and outreach materials, mainly focused on digital tactics and channels, to reflect the communication plan developed in 3.1(a). Marketing and outreach material development will be coordinated with Peninsula Clean Energy.

(c) Develop and execute limited technical assistance for DC Fast Charge installations on a reactive basis which may include permitting support, utility service support, design support, and equipment specification.

(d) Develop a marketing budget (which is included in Exhibit B, 'Summary of Tasks', Task 3) covering both labor and other direct costs (e.g. digital ads, etc.) necessary for executing on the communications plan developed in Task 3.1(a) and ensuring Peninsula Clean Energy consistency with Peninsula-Silicon Valley Incentive Project.

3.2. **Deliverables**:

(a) Integrated Communications Plan (updated annually)

(b) Marketing / Outreach materials

(c) Marketing budget

(d) Ongoing marketing, education and outreach activities

(e) Regular marketing reporting on Key Performance Indicators

(f) FAQs

(g) EV charging 101 resources common across Projects

(h) Case studies common across Projects

(i) Inclusion of PCE identified resources as appropriate

4. TASK 4: EV CHARGER INCENTIVE PROJECT ADMINISTRATION

4.1. The goal of this task is to administer the Peninsula-Silicon Valley Incentive Project as defined in Tasks 1-3. Center for Sustainable Energy will:

(a) Receive, evaluate, and process Incentive Payments requests.

a. For all Incentive Payments applicants, the process will include:

(1) Requirement that applicant execute Applicant Terms and Conditions.

(2) Requirement that applicant indicate if they have filed for bankruptcy within the last five years and, if so, to provide relevant details certifying under penalty of perjury that the information provided is accurate and complete.

(a) If bankruptcy is identified and has occurred within 5 years of the date of the application, CONTRACTOR shall inform Peninsula Clean Energy of any such applications and shall refrain from issuance any Incentive Payments unless and until such payment is authorized in writing by Peninsula Clean Energy.

(3) Requirement that applicant indicate if they have any threatened or pending legal actions by or against them, loan defaults, or unpaid judgments against them.

(a) If any threatened or pending legal actions, loan defaults, or unpaid judgements are identified, CONTRACTOR shall inform Peninsula Clean Energy of any such applications and shall refrain from issuance any Incentive Payments unless and until such payment is authorized in writing by Peninsula Clean Energy.

(4) Tracking and timely reporting in writing to Peninsula Clean Energy of any:

(a) Complaints about the Peninsula-Silicon Valley Incentive Project

(b) Problematic issues arising in the operation of the Peninsula-Silicon Valley Incentive Project

(c) Knowledge of any threatened or actual legal actions involving any Peninsula-Silicon Valley Incentive Project or incentive applicants, applications, payments (e.g., alleged false information provided in an incentive application or threatened or actual lawsuits over the Peninsula-Silicon Valley Incentive Project).

(d) As needed, CONTRACTOR shall provide Peninsula Clean Energy personnel or other personnel as directed by Peninsula Clean Energy with all project documents, files, and records requested in support of the Commission investigating and resolving any such issues.

(5) Prohibition against applicant submission of materials marked as confidential without prior written approval and instructions from the Peninsula Clean Energy. Peninsula Clean Energy is a public agency, and as such is subject to the Public Records Act. CONTRACTOR shall not agree to keep any incentive application information confidential.

(6) Fair and impartial Project administration, including provision of information in a public manner that avoids giving advantage to any applicant or group of applicants.

b. For each incentive applicant, prior to the issuance of an Incentive Payments the evaluation will include:

(1) Confirmation that the applicant is currently licensed to do business in California;

(2) Confirmation of "active" status for businesses required to register with the California Secretary of State;

(3) Coordination with Peninsula Clean Energy to validate each installation site as a Peninsula Clean Energy customer;

(4) Coordination with Peninsula Clean Energy (and Peninsula Clean Energy's subcontractors) to integrate their technical assistance program with application / applicant handling, review and status determinations; and

(5) Confirmation that site installation meets program requirements through Installation Verification Procedures.

c. Randomly audit a minimum of 10% of applications for compliance with payment of prevailing wages.

(1) For each audited application, prior to the issuance of an Incentive Payment confirm that the project has a Department of Industrial Relations bid number to confirm that Prevailing Wage was paid.

4.2. **Deliverables**:

(a) Processed applications.

5. TASK 5 – DATA COLLECTION

5.1. The goal of this task is to collect and share data on the project applications, implementation and charger utilization. CONTRACTOR will:

(a) Collect, analyze and compile data on the Peninsula-Silicon Valley Incentive Project, which will include without limitation:

(1) All application information including associated supporting documents, equipment installed, and project cost detail;

(2) Type of organizations receiving Incentive Payments;

(3) Timelines to complete each Incentive Payments project;

(4) Time frames associated with EV charger installations;

(5) Ongoing real-time access to EV charger utilization.

(b) Share all above identified and otherwise to be determined application data (for Peninsula Clean Energy customers) with Peninsula Clean Energy.

5.2. **Deliverables**:

(a) Data Collection Reports

(b) Customized data reports and visualizations

(c) Data transfers and utilization data access

6. TASK 6: ADMINISTRATIVE

6.1. **Monthly Progress Reports.** The goal of this task is to provide the reporting that will allow monthly verification that satisfactory and continued progress is made towards achieving the objectives of this Agreement on time and within budget.

6.2. **Deliverables:** The monthly reporting will consist of:

(a) Summary of activity during the reporting period for the purpose of determining whether invoices are consistent with the work performed

(b) Summary of activities planned for the next reporting period.

(c) KPI reports for digital marketing and technical assistance activities (Task 3)

(d) Complaints, programmatic issues and actual or threatened litigation regarding applicants or the Peninsula-Silicon Valley Incentive Project (as identified in Task 4.1(a)(i)(3)(a)).

6.3. Annual and Final Report

(a) CONTRACTOR will prepare annual reports and a final report for Peninsula Clean Energy. The documents will be of a professional standard appropriate for review by elected officials, Peninsula Clean Energy board members, and members of the public. The annual report shall be submitted no later than March 1st each year, for the preceding calendar year, and the final report will be submitted no later than two months after Peninsula–Silicon Valley Incentive Project funds have been exhausted and applicants that have reserved incentives have completed installation. Specification of report content and form will be developed collaboratively with Peninsula Clean Energy.

(b) Deliverable. The Final Report shall include:

(1) Data about the EV chargers and applicants participating in the project during implementation of the Peninsula-Silicon Valley Incentive Project.

(2) Survey of a reasonable percentage of site hosts to assess their satisfaction with the project and recommendations for improvement.

(3) Calculations of GHG emission reductions and other environmental benefits from installation and usage of EV charging infrastructure.

(4) Recommendations for possible future projects including operational improvements and considerations associated with the changing EV market.

(5) Other elements as mutually determined and codified by an amendment revising this Section 6.3 of the Scope of Work.

6.4. Invoicing

(a) CONTRACTOR will periodically prepare an invoice for the advancement of funds designated for the Incentive Payments, based on the projected need. CONTRACTOR shall keep the funds in an interest-bearing account. The interest earned shall only be used for this Agreement upon approval of the Peninsula Clean Energy.

7. PROJECT REPRESENTATIVES

7.1. CONTRACTOR's Project Representative shall be Andy Hoskinson.

7.2. Peninsula Clean Energy's Project Representative shall be the Director of Energy Programs or their delegate.

8. ACCOUNT AND FUNDS MANAGEMENT

8.1. CONTRACTOR shall deposit and maintain separate accounts for CALIFORNIA ENERGY COMMISSION Funds (defined in recitals) available for funding Incentive Payments ("**CALIFORNIA ENERGY COMMISSION Account**") and Peninsula Clean Energy Funds (defined below) available for funding Incentive Payments (the "**Peninsula Clean Energy Account**"), and the CALIFORNIA ENERGY COMMISSION Account and Peninsula Clean Energy Account are collectively, "**Incentive Funds Accounts**".

8.2. Except for the Services Fee, CONTRACTOR shall utilize the funds in the Peninsula Clean Energy Account ("**Peninsula Clean Energy Funds**") solely for the payment of eligible Incentive Payments claims submitted by Peninsula Clean Energy customers and in accordance with other requirements applicable to the Peninsula-Silicon Valley Incentive Project. The requirements for a person or business to be deemed to be a Peninsula Clean Energy customer shall be set forth in the Project design that will be established pursuant to Section 1.2.(a)(vii) of the Scope of Work.

8.3. CONTRACTOR shall inform Peninsula Clean Energy within five business days after the end of each calendar month the amount of Funds in the Peninsula Clean Energy Account.

8.4. CONTRACTOR shall provide to Peninsula Clean Energy a written request for funding from Client Funds (a "**Funding Request**") to the Peninsula Clean Energy Account, and Peninsula Clean Energy shall endeavor to promptly, but no later than 45 days after receipt of a Funding Request, send funds to the Peninsula Clean Energy Account in the amount requested in the Funding Request; *provided that* Peninsula Clean Energy is under no obligation to fund amounts that would result in funding to the Peninsula Clean Energy Account an aggregate amount greater than the agreed to monies intended to be used to fund Incentive Payments. The Funding Requests shall be submitted as follows:

(a) Within 90 days before project start, representing the projected first 9 months of funding needs, and

(b) Every 6 months after project start, the projected funding needs for the next 9 months. CONTRACTOR shall regularly monitor and report actual burn rate of funding on hand, and if burn rate exceeds funding on hand over a projected period, PCE and CONTRACTOR shall agree to CONTRACTOR's submittal of a Funding Request outside of the regular 6 month intervals post project start if necessary for CONTRACTOR to fulfill all application processing requirements.

8.5. If an Incentive Payments applicant meets the CEC's eligibility requirements, but not the eligibility requirements of the Peninsula-Silicon Valley Incentive Project, CONTRACTOR shall draw from the CEC Account to fund the Incentive Payments owing to such Incentive Payments applicant.

Exhibit B
Compensation

PCE shall compensate CONTRACTOR for professional services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below. Compensation shall be calculated based on the hourly rates set forth below up to the total not to exceed budget amount set forth below. The only exception shall be payment of $30,330 to CONTRACTOR for a License Fee. The License Fee shall be paid to the CONTRACTOR within 30 days upon receipt of CONTRACTOR invoice, which will follow official public launch of the Peninsula-Silicon Valley Incentive Project.

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit "A" and reimbursable expenses shall not exceed a total of five hundred and sixty thousand dollars ($560,000), as set forth below and including the License Fee. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be previously approved in writing by PCE.

Summary of Tasks

Task	**Estimated Budget**
1. Incentive Project Design	$ 8,700
2. Development and Configuration of Incentive Processing Website	$ 95,200
3. EV Charger Incentive Project Marketing and Technical Assistance a. With Fast Charge Technical Assistance not to exceed $8750	$ 89,600
4. EV Charger Incentive Project Administration (Processing)	$ 162,000
5. Data Report	$ 90,670
6. Administration	$ 43,500
7. Discretionary expenses only as authorized by PCE	$40,000
Other – License Fee	$ 30,330
Total Not to Exceed Budget	$ 560,000

Contract Staffing

	Position Hourly Rate			
Labor Category Title	**2020 Rates**	**2021 Rates**	**2022 Rates**	**2023 Rates**
Senior Director / Sr. Principal Advisor	$ 200	$ 206	$ 212	$ 219
Director	$ 180	$ 185	$ 191	$ 197
Sr. Manager / Sr. Specialist / Sr. Research Analyst / Sr. Web Developer / UX/UI Designer	$ 165	$ 170	$ 175	$ 180
Research Manager / Graphic Designer	$ 150	$ 150	$ 159	$ 164
Manager / Business Analyst	$ 140	$ 144	$ 149	$ 153
Specialist / Research Analyst	$ 125	$ 129	$ 133	$ 137
Platform Developer / Accountant / Copywriter	$ 120	$ 124	$ 127	$ 131
Coordinator / Junior Research Analyst	$ 100	$ 103	$ 106	$ 109
Marketing Associate / Project Associate	$ 90	$ 93	$ 95	$ 98
Research Analyst Assistant	$ 75	$ 77	$ 80	$ 82
Rebate Processing Specialist	$ 60	$ 62	$ 64	$ 66

Invoices

Monthly Invoicing: In order to request payment, CONTRACTOR shall submit monthly invoices to PCE describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, hours worked, task(s) for which work was performed). Invoices will be submitted with Net 30 terms.

Reimbursable Expenses

Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance, travel, and other ordinary business expenses are included within the Contract Staffing rates noted within this exhibit and are not separately reimbursable expenses. Travel expenses must be authorized in advance in writing by PCE.

Additional Services

CONTRACTOR shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from PCE prior to commencement of any additional services. CONTRACTOR shall submit, at PCE's request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation.

Exhibit C
Pillar Requirements

2020 CALeVIP Pillar Requirements

The California Electric Vehicle Infrastructure Project (CALeVIP) is the California Energy Commission's (CEC) statewide project for public EV infrastructure incentives. The following sections summarize the process, technology, rebate and site eligibility requirements for 2020 CALeVIP incentive projects. These requirements have been developed based on best practices and input from project stakeholders. These requirements are critical for establishing a regional incentive project and ***cannot be modified.***

Process Requirements

- Applications must be submitted online
- Applications approved on first-come first-served basis once all required application documents are submitted
- Applications are not competitively scored or reviewed against one-or-another
- CALeVIP uses EVI-Pro to determine funding levels for each technology within each county and Energy Commission funding will not be negotiable.

CALeVIP Technology Requirements

- **Level 1 Chargers: Not Eligible**

- **Level 2 Chargers:**
  - Include a J-1772 connector
  - Capable of at least 6.2kW
  - Networked with a minimum 2-year networking agreement
  - Must be new (not refurbished, not previously installed and removed)
  - Must be able to revert to an open standard protocol
  - Must be Energy Star Certified
  - Must be listed by a Nationally Recognized Testing Laboratory
  - Must accept at least two payment methods (if payment is required)
    - Acceptable payment methods may include (but are not limited to) mobile app-based payment, a toll-free phone number, near-field communications (NFC) or onsite card reader
    - Level 2 chargers "installed" on and after July 1, 2023 must comply with SB 454 updated payment requirements.

- **Direct Current Fast Charger (DCFC):**
  - Charger must have both a CHAdeMO and Combined Charging System (CCS) connector
  - Capable of at least 50kW
  - Networked with a minimum 5-year networking agreement
  - Must be new (not refurbished, not previously installed and removed)
  - Must be able to revert to an open standard protocol
  - Must be listed by a Nationally Recognized Testing Laboratory
  - Must accept at least two payment methods (if payment is required)
    - Acceptable payment methods may include (but are not limited to) mobile app-based payment, a toll-free phone number, near-field communications (NFC) or onsite card reader

- DC fast chargers "installed" on and after January 1, 2022 must comply with SB 454 updated payment requirements.

CALeVIP Rebates

- **Level 2 Chargers:**
  - An "up-to" incentive amount per connector or percentage of project costs, whichever is less
    - Sites deemed in a designated DAC or low-income community are allotted an incentive adder, increasing the "up-to" dollar amount per connector
  - One site per application
  - New or replacement chargers are eligible
  - Each application may apply for up to a designated connector limit for Level 2 chargers (Maximum quantity to be determined by Energy Commission and Partners in project design)
    - Additional chargers may be installed but will not receive rebate funding from CALeVIP.

- **DC Fast Chargers:**
  - New or replacement chargers are eligible
  - Incentives provided as an "up-to" dollar amount or percentage of total project cost, whichever is less
  - Sites deemed in a designated DAC or low-income community are allotted an incentive adder, increasing the "up-to" dollar amount per connector
  - Each application can apply for an "up to" a designated quantity of DC fast chargers (Maximum quantity to be determined by Energy Commission and Partners in project design)
  - Additional chargers may be installed but will not receive rebate funding from CALeVIP.

CALeVIP Site Eligibility

- **Both Technologies**
  - Eligible sites are county wide and not geo-specific/eligible

- **Level 2 Chargers**
  - Car-sharing/e-mobility service installations are eligible
  - Must be shared use (cannot be dedicated to a single driver)
    - Sites serving single-family residences or dedicated drivers/users are not eligible to receive CALeVIP funds
  - Specification of type of labor (e.g. C-10 licensed contractor, preferred network, EVITP, union labor, or other) is not possible
  - Projects must pay contractors Prevailing Wage
  - May serve public or private sites
  - May serve light-duty fleets
    - Medium-duty vehicles can also use, as long as the chargers are primarily being used for the site's light-duty fleet and medium-duty vehicles are secondary

- **DC Fast Chargers**
  - Must be available to the public 24 hours a day year round
  - Specification of type of labor (e.g. C-10 licensed contractor, preferred network, EVITP, union labor, or other) is not possible
  - Projects must pay contractors Prevailing Wage.
  - Must not be located behind a gate or have restrictions for public use and access

- Must be a site type that is listed as Eligible for DCFC or Combo installations

Exhibit D
Peninsula-Silicon Valley Incentive Project Rebate Amounts

DCFC Power Level	General Market Rebate	Disadvantaged Community/Low Income Rebate
50kW-99.99 kW	Up to $50K; or 75% of the total project cost, whichever is less	Up to $60K; or 75% of the total project cost, whichever is less
100kW+	Up to $70K; or 75% of the total project cost, whichever is less	Up to $80K; or 75% of the total project cost, whichever is less
Level 2	**General Market Rebate**	**Disadvantaged Community/Low Income Rebate**
Capable of at least 6.6 kW	Up to $4,500 / connector; or 75% of the total project cost, whichever is less	Up to $5,000 / connector; or 75% of the total project cost, whichever is less
Multi-unit Dwelling Adder	$1,000 / connector; or 75% of the total project cost, whichever is less	$1,000 / connector; or 75% of the total project cost, whichever is less

AMENDMENT NO. 1 TO AGREEMENT BETWEEN PENINSULA CLEAN ENERGY AND THE CENTER FOR SUSTAINABLE ENERGY

THIS AMENDMENT TO AN AGREEMENT, is entered into this July 29, 2022, by and between PENINUSLA CLEAN ENERGY, a California joint powers authority, hereinafter called "PCE," and the Center for Sustainable Energy, hereinafter called "Contractor".

W I T N E S S E T H:

WHEREAS, the parties entered into an Agreement dated October 2, 2020, for the purpose of Contractor's administration of incentives for electric vehicle charging infrastructure installation ("Agreement"); and

WHEREAS, the parties wish to amend the Agreement to continue services to reflect that there will be $4 million in incentives.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Paragraph 1.2 is hereby replaced in its entirety as follows:

PCE has secured or will secure Client Funds in the amount of $4,000,000.

2. Section 1, General Description, is hereby amended to include the following paragraph immediately following Paragraph 1.2:

1.3 PCE, as a project partner, acknowledges Terms 1 through 4 of Exhibit D Special Terms and Conditions, to the Grant Agreement ARV-16-017. The parties understand and agree that the referenced Special Terms do not apply to PCE's use of customer data (Item #2) for all projects which are PCE funded. Data related to PCE funded projects are solely bound by PCE's pre-existing customer data requirements as set forth in executed agreements maintained by PCE and relevant regulatory requirements.

3. Section 4, Scope of Services and Additional Provisions, is hereby amended to include the following paragraph immediately following Paragraph 4.1.2:

4.1.3. **Exhibit E: California Energy Commission Grant Agreement ARV-16-017**

4. Exhibit B Compensation is deleted in its entirety and replaced with Exhibit B Compensation (revised July 31, 2022).

5. Paragraph 2.1 Payment for Services is hereby replaced in its entirety as follows:

As compensation for Services, PCE shall pay CONTRACTOR a fee (the "**Services Fee**") in accordance with the payment provisions set forth in Exhibit B Compensation (revised July 31, 2022)

6. Except as expressly amended herein, all other provisions of the Agreement not in conflict shall remain in full force and effect.

7. This Amendment No. 1 shall take effect upon the date of execution by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as set forth below.

Peninsula Clean Energy Authority	Center for Sustainable Energy
By: _____	By: _____
Janis C. Pepper, CEO	Lawrence E. Goldenhersh, President
Dated: _____	Dated: _____

Exhibit B
Compensation

PCE shall compensate CONTRACTOR for professional services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below. Compensation shall be calculated based on the hourly rates set forth below up to the total not to exceed budget amount set forth below. The only exception shall be payment of $30,330 to CONTRACTOR for a License Fee. The License Fee shall be paid to the CONTRACTOR within 30 days upon receipt of CONTRACTOR invoice, which will follow official public launch of the Peninsula-Silicon Valley Incentive Project.

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit "A as set forth below and including the License Fee. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be previously approved in writing by PCE.

Summary of Tasks

Task		**Estimated Budget**
1.	Incentive Project Design	$ 8,700
2.	Development and Configuration of Incentive Processing Website	$ 38,240
3.	EV Charger Incentive Project Marketing and Technical Assistance	$26,975
4.	EV Charger Incentive Project Administration (processing)	$ 150,755
5.	Data Report	$12,500
6.	Administration	$12,500
Other – License Fee		$ 30,330
Total Not to Exceed Budget		$280,000

Contract Staffing

	Position Hourly Rate			
Labor Category Title	**2020 Rates**	**2021 Rates**	**2022 Rates**	**2023 Rates**
Senior Director / Sr. Principal Advisor	$200	$206	$212	$ 219
Director	$180	$185	$191	$197
Sr. Manager / Sr. Specialist / Sr. Research Analyst / Sr. Web Developer / UX/UI Designer	$165	$170	$175	$180
Research Manager / Graphic Designer	$150	$150	$159	$164
Manager / Business Analyst	$140	$144	$149	$153
Specialist / Research Analyst	$125	$129	$133	$137
Platform Developer / Accountant / Copywriter	$120	$124	$127	$131
Coordinator / Junior Research Analyst	$100	$103	$106	$109
Marketing Associate / Project Associate	$90	$93	$95	$98
Research Analyst Assistant	$75	$77	$80	$82

Rebate Processing Specialist	$60	$62	$64	$66

Invoices

Monthly Invoicing: In order to request payment, CONTRACTOR shall submit monthly invoices to PCE describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, hours worked, task(s) for which work was performed). Invoices will be submitted with Net 30 terms.

Reimbursable Expenses

Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance, travel, and other ordinary business expenses are included within the Contract Staffing rates noted within this exhibit and are not separately reimbursable expenses. Travel expenses must be authorized in advance in writing by PCE.

Additional Services

CONTRACTOR shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from PCE prior to commencement of any additional services. CONTRACTOR shall submit, at PCE's request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation.

PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: April 21, 2023
BOARD MEETING DATE: April 27, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: David Silberman, General Counsel
Jennifer Stalzer, Assistant General Counsel

SUBJECT: Resolution Approving Agreement Between the Peninsula Clean Energy Authority and Janis C. Pepper to Provide Consulting Services Beginning August 1, 2023, in an Amount Not-to-Exceed $180,000

RECOMMENDATION

The Board's Ad Hoc Committee (consisting of Dave Pine, Rick DeGolia, Donna Colson, and Marty Medina) recommends that the Board approve the Consulting Agreement Between the Peninsula Clean Energy Authority and Janis C. Pepper. After seven years as Chief Executive Officer of PCE, Ms. Pepper is retiring from her position effective June 30, 2023. The Agreement before the Board will allow her to continue to provide support and assistance as needed to the incoming PCE CEO as a consultant. The Agreement provides for Ms. Pepper's services up to forty (40) hours per month beginning August 1, 2023, in exchange for monthly non-refundable retainer installments of $15,000 for six months, with a possible six-month extension, for an aggregate maximum amount not to exceed $180,000.

BACKGROUND/CURRENT STATUS

The Ad Hoc Committee believes that the Agreement will allow for a warm handoff between Ms. Pepper and the incoming Chief Executive Officer. The Agreement is structured in a way that allows sufficient time for knowledge transfer between Ms. Pepper and the incoming CEO, who has yet to be selected. Ms. Pepper's ability to share her expertise and familiarity with the CCA environment as well as the innerworkings of PCE will maximize a healthy transition between CEOs and minimize any potential disruptions within the organization.

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION APPROVING AGREEMENT BETWEEN THE PENINSULA CLEAN ENERGY AUTHORITY AND JANIS C. PEPPER EFFECTIVE AUGUST 1, 2023 IN AN AMOUNT NOT TO EXCEED $180,000

RESOLVED, by the Peninsula Clean Energy Authority (PCEA) of the County of San Mateo, State of California, that

WHEREAS, PCEA was formed on February 29, 2016; and

WHEREAS, Janis Pepper has served as the Chief Executive Officer of PCEA since May 27, 2016; and

WHEREAS, an agreement between PCEA and Janis Pepper was executed on May 12, 2016 and amended or replaced by agreements dated June 22, 2017, July 26, 2018, January 24, 2019, August 22, 2019, October 22, 2020, July 22, 2021, and most recently on November 17, 2022; and

WHEREAS, after seven years as Chief Executive Officer of PCEA, Ms. Pepper is retiring from her position effective June 30, 2023; and

WHEREAS, the Board's Ad Hoc Committee convened and recommends that the Board approve the referenced Consulting Agreement with Ms. Pepper; and

WHERAS, the Consulting Agreement provides for Ms. Pepper's services as a consultant up to forty (40) hours per month beginning August 1, 2023, in exchange for

monthly non-refundable retainer installments of $15,000 for six months, with a possible six-month extension, for an aggregate maximum amount not to exceed $180,000; and

WHEREAS, the Agreement before the Board will allow Ms. Pepper to continue to provide support and assistance as needed to the incoming PCEA CEO on a consultation basis; and

WHEREAS, Ms. Pepper's ability to share her expertise and familiarity with the Community Choice Aggregator (CCA) environment as well as the innerworkings of PCE will maximize a healthy transition between CEOs and minimize any potential disruptions within the organization; and

WHEREAS, this Board has been presented with a form of such Agreement and has examined and approved as to both form and content and desires to enter into the same.

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Chair of Peninsula Clean Energy be, and hereby is authorized and directed to execute said Resolution approving the Agreement Between the Peninsula Clean Energy Authority and Janis C. Pepper to provide consulting services beginning August 1, 2023, in an Amount Not-to-Exceed $180,000 for and on behalf of Peninsula Clean Energy, and the Clerk of the Board may attest the Chair's signature thereto.

* * * * * *

CONSULTING AGREEMENT BETWEEN THE PENINSULA CLEAN ENERGY AUTHORITY AND JANIS C. PEPPER

THIS CONSULTING AGREEMENT is entered into this _____ of April, 2023, between the PENINSULA CLEAN ENERGY AUTHORITY ("PCEA"), a joint powers agency established by the County of San Mateo and Cities within the County, and JANIS C. PEPPER ("Contractor").

W I T N E S S E T H

WHEREAS, PCEA previously executed an employment Agreement and seven amendments with JANIS C. PEPPER to serve as CEO of PCEA through June 2023;

WHEREAS, Contractor has served PCEA well for the last seven years, continuing to manage a growing enterprise, and desires to retire and resign from her position as CEO, effective June 30, 2023, but begin to serve in a part-time consulting role effective August 1, 2023 on the terms and conditions contained in this Agreement, which supersedes all previous agreements between PCEA and Janis Pepper in their entirety and will become the only effective agreement between PCEA and Janis Pepper upon execution;

WHEREAS, PCEA is currently recruiting a new CEO to replace Janis Pepper and intends to have that CEO in place on or before June 30, 2023;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions as hereinafter set forth, the parties agree as follows:

1. JANIS C. PEPPER will serve as a part-time consultant to PCEA beginning August 1, 2023. Contractor's employment as CEO will cease on June 30, 2023 as originally planned. Jan Pepper will be paid out for unused leave balances consistent with PCEA practice and California law. This Agreement, and Contractor's term of consulting services will commence on August 1, 2023 and end on February 1, 2024, with an option to extend the agreement up to six months to July 31, 2024. Exercise of the option is at the sole discretion of the then current CEO, with the mutual consent of Contractor, and must be exercised in writing on or before January 19, 2024. However, the specification of a term indicates only the maximum length of this Agreement and is not a guarantee of any period of time. Contractor shall serve at the pleasure of PCEA. PCEA or Contractor may terminate this Agreement, without cause, at any time for any reason effective immediately upon 30 days written notice.

2. Contractor shall make herself reasonably available to the future CEO or CEO's designee for up to 40 hours each month. Subject matters of the consulting work may include, but would not be limited to (1) the transition of CEO duties from Janis Pepper to a new CEO or designee; (2) implementation of PCEA's goal of delivering 99% renewable energy to match demand on an hour-by-hour basis, 365 days a year; and (3) special projects as may be identified by the CEO.

3. The CEO shall be Contractor's point of contact with PCEA. CEO shall determine at CEO's sole discretion the consulting work to be performed by Contractor and provide Contractor access to PCEA staff members and those files necessary to perform the consulting work requested as determined by the CEO. At the end of this Agreement, or in

the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of PCEA and shall be promptly delivered to PCEA. Contractor will return any PCEA files provided under this agreement to PCEA.

4. Beginning August 1, 2023 and the ending at the end of the contract term, Contractor will be paid by monthly non-refundable retainer installments of $15,000. The total payments under this agreement shall not exceed one hundred and eighty thousand ($180,000) dollars.

5. Travel is not anticipated and would require separate agreement with the CEO prior to any reimbursement.

6. Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of PCEA.

7. Contractor will receive only those other benefits, if any, that would be provided a part-time employee of PCEA, working the equivalent of 40 hours per month, and in the same manner and cost, and as set-forth in the PCEA Employee Handbook (version 7-28-22) as may be amended from time-to-time.

8. This Agreement represents the entire agreement between the parties with respect to the subject matter addressed herein, and any previous agreements between the parties, whether written or oral, with respect to the subject matter of this agreement, are of no further force and effect, including but not limited to the previous employment Agreement

and seven amendments with JANIS C. PEPPER to serve as CEO of PCEA through June 2023. The PCEA Board hereby delegates to the PCEA CEO authority to exercise any PCEA rights under this agreement as well as the authority to amend the agreement in any manner that does not increase PCEA's maximum financial obligations by more than $25,000 (in aggregate). All subsequent modifications of this agreement shall not be effective unless set forth in writing and executed by Contractor and PCEA CEO.

9. Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of PCEA, to:

Name/Title: David Silberman, General Counsel

Address: 400 County Center, Sixth Floor

Telephone: 650.363.4749

Email: dsilberman@smcgov.org

In the case of Contractor, to:

Name/Title: Janis Pepper

Address: P. O. Box 1211, Los Altos, CA. 94023-1211

Telephone: [redacted]

Email: [redacted]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written below.

Dated_____ PENINSULA CLEAN ENERGY AUTHORITY

By_____
Rick DeGolia
Chair, PCEA Board of Directors

ATTEST:

_____
General Counsel

Dated_____ By_____
Janis C. Pepper

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: April 21, 2023
COMMITTEE MEETING DATE: April 27, 203
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: Approval of appointment of Andrew Stern as Interim Chief Financial Officer and Interim Treasurer

RECOMMENDATION:
Approve the appointment of Andy Stern as Interim Chief Financial Officer and Interim Treasurer.

BACKGROUND:
Kristina Cordero has been Peninsula Clean Energy's (PCE) Chief Financial Officer (CFO) and Treasurer. Kristina provided her notice of resignation with her last day on April 20, 2023. PCE has retained the services of Andy Stern as a consultant to serve as Interim CFO following Ms. Cordero's departure.

Several of PCE's Board-approved policies require the appointment of a CFO and/or Treasurer to take action on PCE's behalf. Specifically, Policy 14 (Delegation of Authority), Policy 17 (Disbursement Policy), and Policy 19 (Investment Policy) delegate certain responsibilities to the CFO and/or Treasurer.

DISCUSSION:
In order to ensure that all financial approvals and activities necessary to operate PCE's business on an uninterrupted basis, it is necessary to appoint a replacement CFO and Treasurer. PCE has determined that it makes sense to have Mr. Stern reprise his previous role at PCE to ensure a smooth transition following Ms. Cordero's departure.

FISCAL IMPACT:
PCE has entered into a consulting agreement with Mr. Stern who started work effective April 19, 2023 and will be working part-time for PCE during his tenure.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

APPROVAL OF APPOINTMENT OF ANDREW STERN AS INTERIM CHIEF FINANCIAL OFFICER AND INTERIM TREASURER

RESOLVED, by the Board of Directors of Peninsula Clean Energy Authority (PCE) of the County of San Mateo, State of California, that

WHEREAS, PCE's current Chief Financial Officer and Treasurer has provided notice of resignation to PCE effective April 20, 2023; and

WHEREAS, several of PCE's Board-approved policies require the appointment of a CFO and Treasurer to take certain actions on PCE's behalf; and

WHEREAS, the PCE Management Team has engaged former PCE Chief Financial Officer Andrew Stern to serve as interim Chief Financial Officer and Treasurer;

WHEREAS, the PCE Management Team requests that incoming Interim Chief Financial Officer have Board authority to perform required activities.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Board of Directors approves the appointment of Andy Stern as Interim Chief Financial Officer and Interim Treasurer.

* * * * * *

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: April 17, 2023
BOARD MEETING DATE: April 27, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority (PCEA) Board of Directors

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: CEO Report

REPORT

Staffing Updates

We are currently recruiting for the following open positions. The job descriptions can be found on the website:

Power Resources Analyst / Specialist

We are also recruiting for 6 summer internship positions. We are asking that interested candidates submit their applications for these summer internship positions by May 12:

Summer 2023 Power Supply Contracts Internship

Summer 2023 Data Analyst Internship

Summer 2023 Load Forecasting Internship

Summer 2023 Buildings Electrification Internship

Summer 2023 Electric Vehicles Internship

Summer 2023 Energy Equity Research Internship

Ninth Circuit Court Ruling regarding Natural Gas Hookups for New Construction

- On April 17, 2023 the United States Court of Appeals for the Ninth Circuit issued a ruling in favor of the California Restaurants Association and in doing so invalidated the City of Berkeley's ordinance prohibiting gas hookups for new construction. Berkeley has not yet publicly responded to the decision. No injunction or stay of the ordinance has been issued.

- The ruling has been widely publicized however, many open questions remain regarding implications on local building code enhancements ("Reach Codes"), including those that have been adopted by PCE member jurisdictions.

- The Berkeley code is a "municipal code" using local "police powers" in relation to health and safety and, in this way, is different than codes adopted by PCE jurisdictions. The Reach Codes adopted by the County and cities are based instead on Title 24 of the Energy Code and the applicability of the *City of Berkeley* ruling to Title 24-based Reach Codes has not yet been determined.

- PCE is conferring with other agencies and is engaged in its own analysis. PCE is not recommending a specific action at this time until additional details become available. Further, this case may be appealed. Nevertheless, each agency is encouraged to make its own assessment of legal risk. PCE counsel is available to discuss this issue upon request.

- The ruling is here and a publicly available analysis from Columbia Law is available here.

CalCCA Annual Conference

As we announced last month, the CalCCA annual conference will be in-person this year, from May 17 to May 19 in San Diego at the Marriott Marquis San Diego Marina. This is a great opportunity to learn more about what CCAs across the state are doing and meet other staff and board members from the 25 different CCAs in California. There will be an Elected Officials Luncheon on Friday, May 19. If you would like to attend the CalCCA annual conference, please let Nelly know. We will cover board member expenses, and will register you and reserve rooms at the hotel.

Presentations and Speaking Events

One of my goals and objectives from the board is to seek out speaking opportunities to evangelize the work we are doing at PCE, and in particular, the work we are doing on the 24/7 renewables goal. With the January 10 publishing of "Achieving 24/7 Renewable Energy by 2025", the number of opportunities has increased:

- On March 29, a total of 11 board members and alternate board members participated in our Board Orientation training.

- On March 30, I spoke at a webinar sponsored by the Alberta Municipal Climate Change Action Centre, the Pembina Institute, and the Business Renewable Centre Canada on "The Power of Aggregation: Enabling Community Renewable Energy in Alberta". My presentation covered what is a CCA, what is Peninsula Clean Energy, how does a CCA work and positively impact our communities, our strategic goals, our 100% renewable on a 24/7 basis goal, aggregation efforts of our Solar+Storage on Public Buildings program, and our other energy programs offerings.

- On March 30, I presented the All-Electric Awards to our residential and commercial winners at the Sustainable San Mateo County awards event.

- On April 1, I spoke at the Sierra Club's Loma Prieta Chapter Environmental Stewardship Program 8.0 webinar on "Our Clean Energy Future: Microgrids or Continuation of the Status Quo?" My talk highlighted our 24/7 work as well as our Solar+Storage on Public Buildings efforts. Other participants included the Clean Coalition, and there was a good discussion on opportunities for CCAs to collaborate on microgrid opportunities to provide more resilience for local residents and businesses. There were approximately 40 attendees.

- On April 11, I met with two representatives from the office of the Canadian Minister of the Environment and Climate Change to exchange knowledge about Peninsula Clean Energy's 24/7 paper and model, and Canada's carbon pricing program.

- On April 14, I presented highlights about Peninsula Clean Energy on the San Mateo County Climate Resiliency panel for the Sam Mateo County Leadership Program Sustainability Day, sponsored by the Chamber San Mateo County. Also presenting on the panel were Len Matterman with One Shoreline and Deputy Fire Chief Dave Pucci from the Cal FIRE Incident Management Team. Peninsula Clean Energy board member and Redwood City Council Member Elmer Martinez was the moderator for the panel.

- On April 21, I made a presentation to the San Francisco Local Agency Formation Commission (LAFCo) on Peninsula Clean Energy's strategy for 24/7 renewable energy. The SF LAFCo provides oversight of CleanPowerSF and advises the SF Board of Supervisors and the SFPUC. As CleanPowerSF is pursuing at 90% time-coincident by 2030 preferred portfolio, the LAFCo is interested in learning about our plans to reach 99% time-coincidence as early as 2025.

Meet and Greets with Regulators

- On March 27, we met with CPUC President Alice Reynolds. Thank you to board members Donna Colson and Jeff Aalfs for joining us and sharing your perspectives.

- On April 3, we met with CEC Chair David Hochshild. Thank you to board members Tygerjas Bigstyck, Donna Colson, and Rick DeGolia for joining us and sharing your perspectives.

- On April 19, we met with CPUC Commissioner Darcie Houck. Thank you to board members Elmer Martinez and Marty Medina for joining us and sharing your perspectives.

- On April 24, we will be meeting with CPUC Commissioner Andrew McAllister.

Impact of COVID-19 on PCE Load

This will be the last monthly report on changes in load due to COVID-19. We will transition to a quarterly update going forward.

Attached to this report are summary graphs of the impact of COVID-19 on Peninsula Clean Energy's load. The first graph, "Monthly Load", shows the change in load on a monthly basis from March 2021 through February 2023. We saw a 4% in PCE's overall load from April 2022 to March 2023 compared to April 2021 to March2022- mainly due to enrollment of customers from the City of Los Banos. Also continuing the same pattern as reported last month, the second graph, "Monthly Load Changes by Customer Class", shows that industrial load was lower from May 2022 – January 2023 compared to May 2021 – January 2022. Commercial and residential load was higher from May 2022 through January 2023 compared to May 2021 – January 2022. Commercial, industrial and residential load was higher in February and March 2023 compared to February and March 2022. The third graph, "Load Shapes (PCE)", shows the change overall in our load on an hourly basis. March 2023 load was higher in all hours compared to March 2021 and 2022. Thank you to Moya Enright and Mehdi Shahriari on our Power Resources team for compiling these graphs.

Monthly Load

- 4% increase in PCE's load in April 2022 - March 2023 compared to April 2021 - March 2022 (Mainly due to enrollment of Customers from City of Los Banos).

Monthly Load Changes by Customer Class

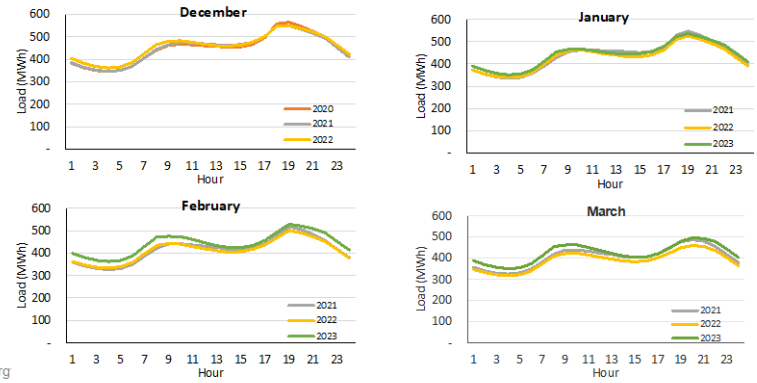
- In March-April of 2022, Industrial and Residential load was lower compared to same months in 2021. Commercial load was higher in March-April 2022 compared to March-April 2021.
- In May 2022 - January 2023, Industrial load was lower compared to May 2021 - January 2022. Commercial and Residential load was higher in May 2022 - January 2023 compared to May 2021 - January 2022.
- In February & March 2023, Commercial, Industrial and Residential load was higher compared to February & March 2022.

Agricultural	-12%	-15%	-5%	-6%	-15%	-29%	-31%	-35%	-38%	-37%	-46%	-44%
Industrial	-16%	-18%	-15%	-15%	-7%	-8%	-8%	-7%	-1%	-3%	4%	8%
Small Commercial	-3%	1%	1%	-2%	1%	1%	-3%	4%	4%	5%	6%	6%
Medium Commercial	11%	15%	14%	7%	12%	14%	7%	1%	-2%	-3%	-5%	-4%
Large Commercial	1%	3%	4%	1%	2%	4%	-3%	-5%	-2%	3%	3%	8%
Residential	-4%	0%	7%	7%	8%	11%	1%	12%	5%	5%	15%	16%
Street Lights-Other	-5%	-2%	1%	5%	3%	3%	2%	4%	5%	3%	4%	4%
PCE	-1%	2%	5%	3%	5%	7%	0%	4%	2%	3%	7%	9%
Month	4	5	6	7	8	9	10	11	12	1	2	3

* For months 4-12, the heatmap shows how much load in 2022 was lower/higher compared to same month in 2021. For months 1-3, the heatmap shows how much load in 2023 was lower/higher compared to same month in 2022.

Load Shapes (PCE)

- December: 2022 load was higher than 2021 load in overnight and early morning hours.
- January: 2023 load was higher than 2022 load in almost all hours.
- February: 2023 load was higher than 2022 load in all hours.
- March: 2023 load was higher than 2022 load in all hours.



Reach Codes

Below is a table showing the status of Reach Code adoption by Peninsula Clean Energy jurisdictions, including the status for reach codes for New Construction and reach codes for Existing Buildings. Thank you to Rafael Reyes and Blake Herrschaft on our programs team for their work in this area.

East Palo Alto – Adopted New Building Reach Codes on Tuesday, March 21

South San Francisco – NC first reading Wednesday, March 22

Colma – NC study session Wednesday, March 22

	Member Agency	2019 Status	2022 Status: New Construction	2022 Status: Existing Construction
	Atherton		Adopted 11/16	
	Belmont	Adopted	Adopted 1/10	
	Brisbane	Adopted	Adopted 11/17	Exploring
	Burlingame	Adopted	Adopted 11/21	
	Colma	Adopted	Study session 3/22	
	County of San Mateo	Adopted	Adopted 1/3	Exploring
	Daly City	Adopted	Adopted 11/15	
New	East Palo Alto	Adopted	Adopted 3/21	
	Foster City			
	Half Moon Bay	Adopted	EV first reading passed 12/6 (2019 gas ban for buildings)	Adopted 2019
	Hillsborough	Adopted	Continuing 2019 through 2022	
	Menlo Park	Adopted	Adopted 11/15	Exploring
	Millbrae	Adopted	Adopted 12/13	
	Pacifica	Adopted	Adopted 11/28	
	Portola Valley		Adopted 10/26	
	Redwood City	Adopted	Adopted 11/28	
	San Bruno		Adopted 10/11	
	San Carlos	Adopted	Adopted 10/24	Exploring
	San Mateo	Adopted	Adopted 11/7	
	South San Francisco	Adopted	First reading 3/22	
	Woodside			

1

We have also added this second table below that provides more details for each jurisdiction as to the Reach Codes they have adopted for both EVs and buildings. EVCS means "EV Charging Station" is installed and EV-R means "EV-Ready" with an outlet that an EV can plug into.

Member Agency	2019?	2022 New Construction	EV Code	Building Code	2022: Existing
Atherton		Adopted 11/16	Multi-family N/A	All-electric, cooking exempt	
Belmont	Y	Adopted 1/10	15% L2 EVCS, 25% L2 EV-R, 60% L1 EV-R	All-electric	
Brisbane	Y	Adopted 11/17	Above model code	All-electric	Exploring
Burlingame	Y	Adopted 11/21	40% L2 EVCS, 60% L1 E-VR	All-electric	
Colma	Y	Study session 2/8		All-electric	
County of San Mateo	Y	Adopted 1/3		All-electric	Exploring
Daly City	Y	Adopted 11/15	2019 model	All-electric	
East Palo Alto	Y	First reading 2/7	2019 model	All-electric	
Foster City				All-electric	
Half Moon Bay	Y	EV first reading passed 12/6 (2019 gas ban for buildings)		All-electric	2-way AC, renovations, pre-wiring
Hillsborough	Y	Continuing 2019 thru 2022	Multi-family N/A	All-electric, cooking and drying exempt	
Menlo Park	Y	Adopted 11/15	Above model code	All-electric with lab exempt	Exploring
Millbrae	Y	Passed	25% L2 EV-R, 75% L1 EV-R	All-electric	
Pacifica	Y	Adopted 11/28	15% L2 EVCS, 85% Low power Level 2 EV-R	All-electric	Exploring
Portola Valley		Adopted 10/26	Unique code focused on small residential	All-electric	2-way AC, renovations, pre-wiring
Redwood City	Y	Adopted 11/28	40% L2 EVCS, 60% L1 E-VR	All-electric, reduced exemptions	
San Bruno		Adopted 10/11	Low power option	All-electric	
San Carlos	Y	Adopted 10/24	40% L2 EVCS, 60% L1 E-VR	All-electric, lab exempt	Study session on 1/23
San Mateo	Y	Adopted 11/7	15% L2 EVCS, 85% Low power Level 2 EV-R	All-electric	

Other Meetings and Events Attended by CEO

Attend weekly and monthly CalCCA Board and Executive Committee meetings.

Attend monthly California Community Power (CCPower) board meetings.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: April 21, 2023
BOARD MEETING DATE: April 27, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Peninsula Clean Energy Board of Directors

FROM: Jan Pepper, CEO
Shawn Marshall, COO
Shayna Barnes, Operations Specialist

SUBJECT: Approval of Diversity, Equity, Accessibility, and Inclusion (DEAI)-Related Amendments to the Strategic Plan and Policies 9 and 10

RECOMMENDATION

Approval of Diversity, Equity, Accessibility, and Inclusion (DEAI)-related amendments to the Strategic Plan and Policies 9 and 10.

BACKGROUND

Peninsula Clean Energy has been working on our DEAI initiative for over two years. This initiative started with the formation of a Citizens Advisory Committee (CAC) Equity Working Group in July 2020. The CAC Equity Working Group worked on a draft equity statement for our organization for several months, and ultimately brought it to the Peninsula Clean Energy Board of Directors at their January 28, 2021 meeting. At that meeting, the Board of Directors accepted the draft equity statement and formed a DEAI Subcommittee to build on the statement and create a DEAI organizational policy and action plan for Peninsula Clean Energy. Board members on this subcommittee include Directors Donna Colson, Sam Hindi, Carlos Romero, Roderick Daus-Magbual, and former Director Michael Smith.

To create the DEAI organizational policy and action plan, Peninsula Clean Energy staff drafted a Request for Proposals (RFP) for DEAI consulting services under direction from the DEAI Subcommittee to be released as a competitive solicitation. The solicitation was released in early May 2021, with responses due in mid-June 2021. Staff and the DEAI Subcommittee conducted several interviews over the summer of 2021 with the top respondents of this RFP. The DEAI Subcommittee recommended that the consultant team from GCAP Services, Inc. be selected to carry out the DEAI work as they were best fit for Peninsula Clean Energy's range of needs. The full Peninsula Clean Energy Board approved the contract with GCAP Services, Inc. at the Board meeting on October 28, 2021. The scope of work for the engagement with GCAP Services had five main tasks:

1. Review Relevant DEAI Legislation and Regulatory Requirements (complete)
2. Conduct DEAI organizational needs assessment (complete)
3. Create organizational DEAI Policy (complete)

4. **Update relevant organizational policies, including: Strategic Plan, Employee Handbook, Policy #9 Ethical Vendor Standards, Policy #10 Inclusive and Sustainable Workforce Policy (in progress)**
5. DEAI Action Plan: Create organizational departmental goals, practices, and metrics to operationalize DEAI policies (in progress)

We are seeking Board approval for three of the four policies/documents updated as part of task 4 of the DEAI scope of work. These policies/documents include Peninsula Clean Energy's Strategic Plan, Policy #9, and Policy #10. Employee handbook edits are still in progress and will be presented to the Board at a later date.

DISCUSSION

Strategic Plan

We are proposing the below edits to the Organizational Excellence pillar of the Strategic Plan:

Current: Ensure organizational excellence by adhering to sustainable business practices and fostering a workplace culture of innovation, diversity, transparency, and integrity.

Proposed Change: Ensure organizational excellence by adhering to sustainable business practices and fostering a workplace culture of innovation, diversity, equity, accessibility, inclusion, transparency, and integrity.

We anticipate making more updates to the Strategic Plan at the Key Tactic level during implementation of the DEAI Action Plan. Those updates are at a staff level and do not require Board approval.

Policy #9

This policy is currently titled "Ethical Vendor Standards." We are proposing changing the title to "Ethical Procurement Standards". With the proposed revisions to the policy, the focus has broadened from our vendors' conduct to also include staff's procurement conduct and activities. The entirety of the proposed revised policy is new language except for Section 1: Ethical Vendor Standards. We borrowed heavily from the County of San Mateo's Code of Ethical Conduct: Procurement Ethics when drafting the additions to the policy. Complete redline and clean versions of Policy #9 are attached as Attachments 1 and 2 to this memo.

Policy #10

We are proposing the following changes to Policy #10: Inclusive and Sustainable Workforce Policy:

- Updated formatting: addition of numbered section headers for easier policy navigation
- Reformatting of Policy Statement under Section 1: primarily restructuring language that was already included in the original policy, also includes proposed revised Organizational Excellence goal from the Strategic Plan (see above) and reference to the recently approved Policy 22: Diversity, Equity, Accessibility, and Inclusion
- Revised item 4 in Section 2b: Supply Chain to request information from suppliers and contractors of their status as a minority, women, LGBT, disabled veteran, or persons with disabilities owned business, rather than collecting information on inclusivity of their workforce (which is addressed in item 6 of this section)

- Revised item 6 in Section 2b: Supply Chain to encourage, not require, reporting from developers and large vendors on inclusivity in business staff. Removed reference to business ownership from this item, as that is now addressed in the proposed edits to item 4 in this section
- Added Attachment A: Supply Chain Code of Conduct to the policy, now referenced in item 7 of Section 2b: Supply Chain
- Addition of the City of Los Banos in Section 2c: Inclusive Business Practices
- Addition of the City of Los Banos/Merced County/Central Valley when defining "local" in Section 3b: Sustainable Workforce Objectives
- Modification of language in Section 3d: Peninsula Clean Energy Owned Generation Projects from "shall use" to "shall use best efforts to use." The "best efforts" language was initially proposed by staff but modified by the Executive Committee at their April 10, 2023 meeting to "shall prioritize and give preference to."
- Modification of the apprenticeship requirement in Section 3d: Peninsula Clean Energy Owned Generation Projects to better comport with Inflation Reduction Act (IRA) requirements to receive full tax credits
- Removal of entire section/paragraph on PCE Feed-In Tariff Price Projects
- Renaming Section 3e to Peninsula Clean Energy Programs from PCE Energy Efficiency Projects, and updating the rest of this section to reference energy programs as opposed to energy efficiency projects

Meetings with Labor Representatives regarding Policy #10 Inclusive and Sustainable Workforce Policy

Peninsula Clean Energy staff initially brought the edited Policy #10 to the Executive Committee at their meeting on January 9, 2023. At that meeting, the Executive Committee directed staff to meet with local labor representatives regarding the suggested edits to Section 3d: Peninsula Clean Energy Owned Generation Projects before recommendation of Executive Committee approval to the full Board of Directors. Based on this direction, Peninsula Clean Energy staff member Marc Hershman reached out to labor representatives to schedule a meeting to discuss the proposed edits. Peninsula Clean Energy staff members Jan Pepper, Marc Hershman, and Shayna Barnes held a meeting with labor representatives Bart Pantoja (San Mateo Building and Construction Trades Council), Dave Mauro (IBEW 617), Scott Wein (IBEW 617), and Rick Bonilla on January 25, 2023 to discuss revisions to section 3d of Policy #10.

At the January 25, 2023 meeting, labor representatives expressed concern over the modification of Section 3d of Policy #10 from "shall" to "shall use best efforts," to use local businesses, union labor, and apprenticeship programs. They also expressed concern over the previously proposed edit of an increase in the apprenticeship requirement from 20% to 25% in Section 3d. Peninsula Clean Energy staff explained the reasoning behind changing the language to "shall use best efforts," including a desire for increased flexibility, particularly for smaller projects where there may not be interest from union firms, and to balance other Peninsula Clean Energy priorities, including DEAI goals. Peninsula Clean Energy staff also reaffirmed our commitment to make best efforts to work with labor while prioritizing Peninsula Clean Energy's core mission to reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions. Peninsula Clean Energy staff and labor representatives also discussed the modification of the apprenticeship requirements from 20% to 25%. Peninsula Clean Energy staff originally suggested a 25% apprenticeship requirement based on our initial understanding of the Inflation Reduction Act's (IRA's) requirements. At the meeting on January 25, Peninsula Clean Energy staff and labor

agreed that further clarification was needed on the IRA's apprenticeship requirements for increased tax credits.

Peninsula Clean Energy staff proposed the following, and is seeking the Board's direction with regard to item 1 below:

1. Consider the proposed edits for "shall use best efforts" language to present to the Executive Committee for their guidance and consideration at their April 10, 2023 meeting. At that meeting, the Executive Committee modified the "best efforts" language to "shall prioritize and give preference to." Peninsula Clean Energy staff agrees with this change for the reasons stated above (increased flexibility and balancing multiple priorities in pursuit of our primary mission, which is to reduce greenhouse gas emissions).
2. Conduct further research on the IRA's apprenticeship requirements to receive full tax credits.

After receiving consultation and advice on the above pending issues, Peninsula Clean Energy proposes edits to Section 3d of Policy #10, removing the previous 25% modification, and adding a direct reference to the IRS guidance, Notice 2022-61. The IRS guidance in Notice 2022-61 describes three different kinds of apprenticeship requirements that must be satisfied in order to qualify for the increased tax benefit: (1) Apprenticeship Labor Hour Requirements; (2) Apprenticeship Ratio Requirements; and (3) Apprenticeship Participation Requirements. These three requirements do not necessarily conflict with the existing 20% requirement in the previously approved Policy #10. Thus, Peninsula Clean Energy staff recommends retaining the 20% apprenticeship benchmark in the policy as well.

Peninsula Clean Energy staff drafted a report and brought these policy revisions to the February 13, 2023 Executive Committee for their consideration. The February 13 meeting was adjourned prior to this agenda item being heard. Peninsula Clean Energy staff met again with labor representatives on March 6, 2023 to discuss the proposed revisions to Policy 10, specifically section 3d: Peninsula Clean Energy Owned Generation Projects. Labor representatives reiterated their concern with the proposed language change to "shall use best efforts" in this section. Peninsula Clean Energy staff deferred to the Executive Committee for their decision on whether to recommend Policy 10 with these proposed changes to the full Board. More detail on the Executive Committee discussion and recommendation is provided below.

Additional Clarifications to Workforce Requirements

Additional changes made pursuant to the Inflation Reduction Act (IRA) workforce requirements are highlighted in yellow in the attached redline version of Policy #10. The purpose of these edits is to further clarify and refine IRA requirements. These changes include:

- Adding a minimum project size in the third sentence of Section 3d. The IRA workforce requirements do not apply to projects below this size.
- Adding a reference to the tax code directly, and also adding language to reference any future guidance that may be issued on these workforce requirements.

Executive Committee Discussion and Recommendation on Section 3d: Peninsula Clean Energy Owned Generation Projects

At the April 10, 2023 meeting, Executive Committee members had a lengthy discussion regarding staff's proposed revisions in Policy #10's Section 3d: Peninsula Clean Energy Owned Generation Projects. Following are some of the key discussion points:

Executive Committee members asked staff to explain, in practical terms, the difference between "shall" and "best efforts." Staff emphasized that our Government Solar (GovPV) program is the primary program/project type that would fall under this section: Peninsula Clean Energy Owned Generation Projects. Staff explained that PCE would still prefer to work with union firms and anticipates going forward with the RFP process to choose a union firm should a bid come forward. For the GovPV program we would use prevailing wage and an evaluation process with a preferential inclination for union labor. Committee members asked if, in practice, "shall use best efforts" would be similar to our current practices. Staff confirmed that if the language were changed to "best efforts", we would still make every effort to work with union firms.

Committee members and staff heard public comment. After public comment, discussion among Committee members continued.

Committee members noted that there seemed to be two issues raised during public comment: 1) the modification of the "shall" language in Policy 10, and 2) comments from the Environmental Justice and Workforce Alliance (EJ Alliance) regarding Peninsula Clean Energy's workforce policies and practices. Committee members suggested bifurcating the issues and dealing with the current proposals to modify Policies 9, 10 and the Strategic Plan, and directed staff to meet with the EJ Alliance and to return to the Executive Committee on those topics at a later date.

Several committee members expressed that they would like stronger language than "shall use best efforts," and others emphasized the need to still have flexibility in the policy. **Committee members ultimately decided to modify the proposed language from "shall use best efforts" to "shall prioritize and give preference to."** The intent behind this language change is to direct staff to use union labor whenever possible, but in cases where it is infeasible and/or inhibits staff's ability to timely or economically move forward on projects, staff has the flexibility to select non-union labor as the situation warrants.

Complete redline and clean versions of Policy #10 are attached as Attachments 3 and 4 to this memo. The new addition to the policy, Attachment A: Supply Chain Code of Conduct is included as Attachment 5 to this memo.

STRATEGIC PLAN

The DEAI Initiative, and these policy updates specifically, support the Organizational Excellence pillar of the Strategic Plan to *ensure organizational excellence by adhering to sustainable business practices and fostering a workplace culture of innovation, diversity, equity, accessibility, inclusion, transparency, and integrity*. This initiative seeks to support the following objective and key tactics under this pillar:

Objective D: External Vendor Partners: Implement Vendor Policies that embrace diversity and inclusion and that optimize engagement results

- Key Tactic 1: Develop methods to ensure adherence to the organization's Inclusive and Sustainable Workforce Policy
- Key Tactic 2: Develop methods to ensure adherence to the organization's Ethical ~~Vendor~~ Procurement Standards Policy

This initiative also supports the Community Energy Programs pillar of the strategic plan to *implement robust energy programs that reduce greenhouse gas emissions, align energy supply and demand, and provide benefits to community stakeholder groups.* The DEAI initiative seeks to support the following objectives and key tactics under this pillar:

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities
- Key Tactic 3: Support workforce development programs in the County

ATTACHMENTS

Attachment 1: Redlined Policy 9: Ethical Procurement Standards
Attachment 2: Clean Policy 9: Ethical Procurement Standards
Attachment 3: Redlined Policy 10: Inclusive and Sustainable Workforce Policy
Attachment 4: Clean Policy 10: Inclusive and Sustainable Workforce Policy
Attachment 5: Attachment A to Policy 10: Supply Chain Code of Conduct

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION APPROVING DIVERSITY, EQUITY, ACCESSIBILITY, AND INCLUSION (DEAI) – RELATED AMENDMENTS TO THE STRATEGIC PLAN AND POLICIES 9 AND 10

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

WHEREAS, Peninsula Clean Energy was formed on February 29, 2016 and

WHEREAS, the Board approved the creation of a Citizens Advisory Committee ("Committee" or "CAC") on. February 23, 2017, to be appointed by the PCE Board,

WHEREAS, the CAC's Equity Working Group created a draft equity statement and brought it to the Board of Directors at their January 28, 2021 meeting for consideration and adoption; and

WHEREAS, at that meeting the Board of Directors accepted the draft equity statement and formed a Diversity, Equity, Accessibility, and Inclusion ("DEAI") Subcommittee to create a DEAI organizational policy and action plan for Peninsula Clean Energy,

WHEREAS, to create the DEAI organizational policy and action plan Peninsula Clean Energy staff drafted a Request for Proposals (RFP) for DEAI consulting services under direction from the DEAI subcommittee,

WHEREAS, the Peninsula Clean Energy Board selected the consultant GCAP Services Inc., to work on the DEAI project in conjunction with staff,

WHEREAS, part of the Scope of Work for the DEAI consultant included recommending edits to Peninsula Clean Energy's Strategic Plan and Policies 9 and 10,

WHEREAS, Peninsula Clean Energy staff received these recommended edits from the consultant and made additional modifications,

WHEREAS, Peninsula Clean Energy staff believe these proposed policy revisions balance Peninsula Clean Energy's priorities of continuing to work with union labor while also considering DEAI goals in pursuit of our core mission, which is to reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions,

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board approves the Diversity, Equity, Accessibility, and Inclusion (DEAI) - related amendments to the Strategic Plan and Policies 9 and 10.

* * * * * *

Policy Number: 9
Board Adoption: November 17, 2016
Revised: XX XX, XXXX

Ethical Procurement Standards

Policy: This policy is designed to provide guidance and standards for Peninsula Clean Energy (PCE) staff in order to fully serve our customers and vendors to the highest standards of ethical procurement conduct.

Staff will abide by and uphold ethical procurement practices in relation to all procurement activities as outlined in the following sections.

1. Ethical Vendor Standards

Peninsula Clean Energy is committed to the highest standards of responsible behavior and integrity in all of its business relationships. ~~PCE~~As such, Peninsula Clean Energy will consider a company's business practices, environmental track record, and commitment to sustainability in its procurement decisions.

2. Sustainability and Social Responsibility

As a leader in clean and renewable energy, Peninsula Clean Energy is committed to reducing emissions and finding innovative ways to conserve energy and cut waste which includes sustainable purchasing.

3. Transparency

Peninsula Clean Energy staff will ensure that formal RFP solicitations will be conducted in a fair, open, consistent, and transparent manner. Information on the solicitation and procurement process in which goods and services are procured will be available to all key parties. Additionally, solicitation information not subject ~~to commercial confidentiality~~to confidentiality rules or other applicable regulations, will~~about solicitations will~~ be available to the public ~~on a~~by request ~~basis once the~~w~~t~~hen the -contract with the selected proposer has been completed.

4. Confidentiality

To the extent allowed by law, Peninsula Clean Energy staff shall maintain the confidentiality of the procurement and proposer information until the solicitation process has been completed.

5. Impartiality

Peninsula Clean Energy staff will be impartial when designing and implementing the solicitation and award of contract. This includes selecting unbiased panelists for award selection.

6. Professionalism

As representatives of Peninsula Clean Energy, staff must conduct themselves in a professional and ethical manner.

7. Compliance

Peninsula Clean Energy staff must conduct procurement activities in compliance with all federal, state, and local laws, applicable regulations, and Peninsula Clean Energy operational policies.

8. Accountability

Peninsula Clean Energy staff ~~are responsible for their own actions and~~ have a~~n reponsibiity~~responsibility and o~~o~~bligation to report or seek further guidance on ~~actions that they believe may not follow ethical procurement practices.~~concerns about compliance with this policy.

It ~~is our~~is Peninsula Clean Energy's shared responsibility to immediately report any concerns regarding ethical conduct and/or compliance with this policy to Human Resources and/or senior management.

Ethical Procurement Standards

Policy: This policy is designed to provide guidance and standards for Peninsula Clean Energy (PCE) staff in order to fully serve our customers and vendors to the highest standards of ethical procurement conduct.

Staff will abide by and uphold ethical procurement practices in relation to all procurement activities as outlined in the following sections.

1. Ethical Vendor Standards

Peninsula Clean Energy is committed to the highest standards of responsible behavior and integrity in all of its business relationships. As such, Peninsula Clean Energy will consider a company's business practices, environmental track record, and commitment to sustainability in its procurement decisions.

2. Sustainability and Social Responsibility

As a leader in clean and renewable energy, Peninsula Clean Energy is committed to reducing emissions and finding innovative ways to conserve energy and cut waste which includes sustainable purchasing.

3. Transparency

Peninsula Clean Energy staff will ensure that formal RFP solicitations will be conducted in a fair, open, consistent, and transparent manner. Information on the solicitation and procurement process in which goods and services are procured will be available to all key parties. Additionally, solicitation information not subject to confidentiality rules or other applicable regulations, will be available to the public by request when the contract with the selected proposer has been completed.

4. Confidentiality

To the extent allowed by law, Peninsula Clean Energy staff shall maintain the confidentiality of the procurement and proposer information until the solicitation process has been completed.

5. Impartiality

Peninsula Clean Energy staff will be impartial when designing and implementing the solicitation and award of contract. This includes selecting unbiased panelists for award selection.

6. Professionalism

As representatives of Peninsula Clean Energy, staff must conduct themselves in a professional and ethical manner.

7. Compliance

Peninsula Clean Energy staff must conduct procurement activities in compliance with all federal, state, and local laws, applicable regulations, and Peninsula Clean Energy operational policies.

8. Accountability

Peninsula Clean Energy staff have a responsibility and obligation to report or seek further guidance on concerns about compliance with this policy.

It is Peninsula Clean Energy's shared responsibility to immediately report any concerns regarding ethical conduct and/or compliance with this policy to Human Resources and/or senior management.

Inclusive and Sustainable Workforce Policy

1. Policy~~: One of PCE's strategic goals is to "foster a work environment that espouses sustainable business practices and cultivates a culture of innovation, diversity, transparency, integrity, and commitment to the organization's mission and the communities it serves." PCE~~ Statement

Peninsula Clean Energy recognizes that an inclusive and sustainable workforce helps ~~PCE~~Peninsula Clean Energy meet its core mission and goals more effectively~~, serve its~~ by:

- Serving our customers in a ~~more~~ culturally sensitive manner~~, and reflect the businesses we partner with and~~; and
- Reflecting the community we serve ~~more comprehensively. PCE~~and the businesses with which we partner.

Peninsula Clean Energy strives to have a workforce that is as inclusive as the ~~community it serves~~communities it serves. Additionally, Peninsula Clean Energy strives to create employment opportunities to help build and sustain healthy and sustainable communities.

~~Inclusive Workforce~~

~~PCE~~This policy, Inclusive and Sustainable Workforce, along with Policy Number 22, Diversity, Equity, Accessibility, and Inclusion (DEAI) represent Peninsula Clean Energy's commitment to its strategic goal of "ensuring organizational excellence by adhering to sustainable business practices and fostering a workplace culture of innovation, diversity, equity, accessibility, inclusion, transparency, and integrity".

2. Inclusive Workforce

a. Peninsula Clean Energy Staff

~~PCE~~Peninsula Clean Energy relies on its employees to provide clean, cost-effective, alternative energy to its customers. These customers live in diverse communities, and an inclusive workforce comprised of staff who reflect and are invested in these communities allows Peninsula Clean Energy to serve them more effectively. An inclusive staff also provides good jobs for people from diverse communities.

To help maintain and strengthen ~~PCE's~~Peninsula Clean Energy's inclusive staff, ~~PCE~~Peninsula Clean Energy will:

(1) Engage in broad outreach efforts in diverse communities, including disadvantaged and low-income communities, to ensure a diverse pool of candidates for open positions;

(2) Provide fair compensation that aligns with regional market indicators for compensation levels for each position;

(3) Be transparent about these practices and lessons learned; and

(4) Provide contact information for staff who can answer questions about this policy.

b. **Supply Chain**

Peninsula Clean Energy's commitment to inclusion also extends to its supply chain. Where and from whom ~~PCE~~Peninsula Clean Energy purchases goods and services have important consequences for businesses, customers, and their communities. An inclusive supply chain is an important driver for successful delivery of ~~PCE's~~Peninsula Clean Energy's services to its customers, and of fair and equitable economic development generally.

To help ensure an inclusive supply chain, ~~PCE~~Peninsula Clean Energy will:

(1) Strive to use local businesses and provide fair compensation in the purchase of services and supplies;

(2) Proactively seek services from local businesses and from businesses that have been Green Business certified and/or are taking steps to protect the environment;

(3) Engage in efforts to reach diverse communities to ensure an inclusive pool of potential suppliers;

(4) ~~Collect~~ Request information from suppliers and contractors on the inclusivity ~~of~~and diversity in their ~~workforce~~business ownership, including their status as a woman, minority, disabled veteran, LGBT and/or persons with disabilities owned business enterprise;

(5) Include questions about supplier inclusivity in requests for proposals (RFPs) for services;

(6) Encourage reporting from developers and large vendors on inclusivity in business ~~ownership and~~ staff;

(7) Require developers abide by our Supply Chain Code of Conduct, derived from the United Nations Guiding Principles on Business and Human Rights, the Core Conventions of the International Labour Organization ("ILO"), including the ILO Declaration on Fundamental Principles and Rights at Work, the Solar Energy Industries Association Solar Industry Commitment to Environmental and Social Responsibility, and the Responsible Business Alliance Code of Conduct, attached herein as Attachment A of this policy;

~~(7)~~(8)Be transparent about these practices and lessons learned; and

~~(8)~~(9)Provide contact information for staff who can answer questions about this policy.

c. **Inclusive Business Practices**

To fulfill its core mission to provide energy choices to the diverse residents and communities of San Mateo County~~, PCE~~ and the City of Los Banos, Peninsula Clean

Energy must ensure that its services and information are accessible to all communities. Accordingly, ~~PCE~~Peninsula Clean Energy will:

(1) Strive to provide information on ~~PCE's~~Peninsula Clean Energy's services in the multiple languages commonly spoken in ~~PCE's~~Peninsula Clean Energy's service area (including mailers, tabling materials, customer service, call center, workshops and outreach events, advertisements, and other means of customer engagement);

(2) Conduct marketing and outreach in diverse communities (including advertising in minority-owned media, establishing partnerships with community organizations, and using various media, such as radio and television) to increase awareness of ~~PCE's~~Peninsula Clean Energy's services and programs;

(3) Strive to attend important multi-cultural community events with multi-lingual materials and speakers;

(4) Share information about activities and initiatives that promote inclusion, access, and diverse engagement in the community.

d. **Non-Discrimination Pledge**

~~PCE~~Peninsula Clean Energy will not discriminate, and will require that its suppliers do not discriminate, on the basis of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

~~1.~~3. **Sustainable Workforce**

a. Compensation and Workforce Opportunities

Support of local businesses, union labor and apprenticeship and pre-apprenticeship programs that create employment opportunities are important components of building and sustaining healthy and sustainable communities. It is in the interest of Peninsula Clean Energy ~~in San Mateo County (PCE)~~ to provide fair compensation and sustainable workforce opportunities within a framework of competitive service and the promotion of renewable energy, energy efficiency and greenhouse gas reduction.

~~PCE Recognizes~~Peninsula Clean Energy recognizes the importance of locally-generated renewable energy in assuring that California is provided with (1) adequate supplies of renewable energy for economic growth, (2) sustained local job opportunities and job creation, and (3) effective means to reduce the impacts of greenhouse gas emissions. ~~PCE~~Peninsula Clean Energy also recognizes the opportunities that energy ~~efficiency~~ programs provide for local workforce training and employment.

PCEPeninsula Clean Energy supports fair compensation in direct hiring, renewable development projects, energy efficiency programs and in procurement of PCEPeninsula Clean Energy services and supplies. PCEPeninsula Clean Energy also supports quality State of California approved apprenticeship and pre-apprenticeship training programs in construction craft occupations to foster long-term, fairly compensated employment opportunities for program graduates and believes that local apprenticeship and pre-apprenticeship programs are an efficient vehicle for delivering quality training in construction in industry craft occupations.

b. Sustainable Workforce Objectives

Peninsula Clean Energy therefore desires to facilitate and accomplish the following objectives:

(1) Support for and direct use of local businesses;

(1) Support for and direct use of union members from multiple trades;

(2) Support including support for and use of training and State of California approved apprenticeship programs, and pre-apprenticeship programs from within Peninsula Clean Energy's service territory; and

(3) Support for and direct use of green and sustainable businesses.

"Local" is defined as:

1.) San Mateo County; 2.) and the City of Los Banos;

2.) Nine Bay Area Counties (Alameda, Contra Costa, Marin, Napa, San Mateo, San Francisco, Santa Clara, Solano, Sonoma); 3.) Northern California; 4.)) and the County of Merced;

3.) Northern California and the Central Valley; and

4.) California.

Preference will be given first to San Mateo County and the City of Los Banos; second, to the Nine Bay Area Counties and the county of Merced; third, to Northern California and the Central Valley; fourth, to California.

Peninsula Clean Energy will support the objectives stated above in the following ways:

a.c. PCEPeninsula Clean Energy Power Purchase Agreements with Third Parties

PCEPeninsula Clean Energy shall collect information from respondents to any bidding and/or RFP/RFQ process regarding past, current and/or planned efforts by project developers and their contractors to:

- Employ workers and use businesses from the ~~PCE~~Peninsula Clean Energy service territory.
- Employ properly licensed (A, B, C10, C7, C46) contractors and California Certified electricians.
- Utilize multi-trade project labor agreements on the proposed project or any prior project developments.
- Utilize local apprentices, particularly graduates of local pre-apprenticeship programs.
- Pay workers the correct prevailing wage rates for each craft, classification and type of work performed.
- Display a poster at jobsites informing workers of prevailing wage requirements.
- Provide workers compensation coverage to on-site workers.
- Support and use State of California approved apprenticeship programs.

Relevant information submitted by proposers will be used to evaluate potential workforce impacts of proposed projects with the goal of promoting fair compensation, fair worker treatment, multi-trade collaboration, and support of the existing wage base in local communities where contracted projects will be located.

~~b.~~d. ~~PCE~~**Peninsula Clean Energy Owned Generation Projects**

Any ~~PCE~~Peninsula Clean Energy-owned renewable development project shall ~~use best efforts to use~~ prioritize and give preference to local businesses, union labor, and apprenticeship programs through multi-trade agreements and/or through multiple agreements for work. Each construction contractor or subcontractor performing work on any ~~PCE~~Peninsula Clean Energy-owned project shall ~~use~~ prioritize and give preference to a combination of local labor, union labor and apprenticeship programs, and shall follow fair compensation practices, including proper assignment of work to crafts that traditionally perform the work. For each renewable energy project with a maximum net output of at least 1 MW (ac), ~~PCE~~Peninsula Clean Energy, ~~or~~ its construction contractor and subcontractors shall prioritize and give preference to: 1) ~~–~~require of its regular workforce working on the construction of such project that at least 50% of all "journey level" employees shall be graduates of a State of California approved apprenticeship program; (2) ~~and~~require ~~at least~~that its regular workforce working on the construction of such project shall be in conformance with all state and federal apprenticeship requirements, including satisfying the requirements set forth in Section 45(b)(8) of the Internal Revenue Code of 1986, as amended (taking into account the guidance issued by the Internal Revenue Service in Notice 2022-61, and any subsequent or additional guidance, including issued treasury regulations); and (3) require that the percentage of its regular workforce working on the construction of such project ~~20% shall be~~ enrolled and participating in a local State of California approved apprenticeship program be the greater of at least 20% or the percentage required by clause (2) above. ~~.~~Apprenticeship programs must be approved by the State Department of Apprenticeship Standards.

~~**PCE Feed-In Tariff Price Projects**~~

~~PCE shall use best efforts to ensure each construction contractor or subcontractor performing work on any PCE Feed-in Tariff project utilize local businesses, union labor, multi-trade agreement, apprenticeship programs, and fair compensation practices including proper assignment of work to crafts that traditionally perform the work.~~

~~c.~~e. ~~PCE~~Peninsula Clean Energy Programs

~~PCE~~Peninsula Clean Energy shall use best efforts to support local businesses, union labor, and local apprenticeship programs in the implementation of its energy programs. Peninsula Clean Energy shall use best efforts to ensure each construction contractor or subcontractor performing work on any ~~PCE energy efficiency~~Peninsula Clean Energy program utilize local businesses, union labor, local apprenticeship, and fair compensation practices in program implementation including proper assignment of work to crafts that traditionally perform the work~~.~~.

Inclusive and Sustainable Workforce Policy

1. Policy Statement

Peninsula Clean Energy recognizes that an inclusive and sustainable workforce helps Peninsula Clean Energy meet its core mission and goals more effectively by:

- Serving our customers in a culturally sensitive manner; and
- Reflecting the community we serve and the businesses with which we partner.

Peninsula Clean Energy strives to have a workforce that is as inclusive as the communities it serves. Additionally, Peninsula Clean Energy strives to create employment opportunities to help build and sustain healthy and sustainable communities.

This policy, Inclusive and Sustainable Workforce, along with Policy Number 22, Diversity, Equity, Accessibility, and Inclusion (DEAI) represent Peninsula Clean Energy's commitment to its strategic goal of "ensuring organizational excellence by adhering to sustainable business practices and fostering a workplace culture of innovation, diversity, equity, accessibility, inclusion, transparency, and integrity".

2. Inclusive Workforce

a. <u>Peninsula Clean Energy Staff</u>

Peninsula Clean Energy relies on its employees to provide clean, cost-effective, alternative energy to its customers. These customers live in diverse communities, and an inclusive workforce comprised of staff who reflect and are invested in these communities allows Peninsula Clean Energy to serve them more effectively. An inclusive staff also provides good jobs for people from diverse communities.

To help maintain and strengthen Peninsula Clean Energy's inclusive staff, Peninsula Clean Energy will:

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Peninsula Clean Energy's commitment to inclusion also extends to its supply chain. Where and from whom Peninsula Clean Energy purchases goods and services have important consequences for businesses, customers, and their communities. An inclusive supply chain is an important driver for successful delivery of Peninsula Clean Energy's services to its customers, and of fair and equitable economic development generally.

To help ensure an inclusive supply chain, Peninsula Clean Energy will:

(1) Strive to use local businesses and provide fair compensation in the purchase of services and supplies;

(2) Proactively seek services from local businesses and from businesses that have been Green Business certified and/or are taking steps to protect the environment;

(3) Engage in efforts to reach diverse communities to ensure an inclusive pool of potential suppliers;

(4) Request information from suppliers and contractors on the inclusivity and diversity in their business ownership, including their status as a woman, minority, disabled veteran, LGBT and/or persons with disabilities owned business enterprise;

(5) Include questions about supplier inclusivity in requests for proposals (RFPs) for services;

(6) Encourage reporting from developers and large vendors on inclusivity in business staff;

(7) Require developers abide by our Supply Chain Code of Conduct, derived from the United Nations Guiding Principles on Business and Human Rights, the Core Conventions of the International Labour Organization ("ILO"), including the ILO Declaration on Fundamental Principles and Rights at Work, the Solar Energy Industries Association Solar Industry Commitment to Environmental and Social Responsibility, and the Responsible Business Alliance Code of Conduct, attached herein as Attachment A of this policy;

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To fulfill its core mission to provide energy choices to the diverse residents and communities of San Mateo County and the City of Los Banos, Peninsula Clean Energy

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Peninsula Clean Energy will not discriminate, and will require that its suppliers do not discriminate, on the basis of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

3. Sustainable Workforce

a. Compensation and Workforce Opportunities

Support of local businesses, union labor and apprenticeship and pre-apprenticeship programs that create employment opportunities are important components of building and sustaining healthy and sustainable communities. It is in the interest of Peninsula Clean Energy to provide fair compensation and sustainable workforce opportunities within a framework of competitive service and the promotion of renewable energy, energy efficiency and greenhouse gas reduction.

Peninsula Clean Energy recognizes the importance of locally-generated renewable energy in assuring that California is provided with (1) adequate supplies of renewable energy for economic growth, (2) sustained local job opportunities and job creation, and (3) effective means to reduce the impacts of greenhouse gas emissions. Peninsula Clean Energy also recognizes the opportunities that energy programs provide for local workforce training and employment.

Peninsula Clean Energy supports fair compensation in direct hiring, renewable development projects, energy programs and in procurement of Peninsula Clean Energy

services and supplies. Peninsula Clean Energy also supports quality State of California approved apprenticeship and pre-apprenticeship training programs in construction craft occupations to foster long-term, fairly compensated employment opportunities for program graduates and believes that local apprenticeship and pre- apprenticeship programs are an efficient vehicle for delivering quality training in construction in industry craft occupations.

b. <u>Sustainable Workforce Objectives</u>

Peninsula Clean Energy therefore desires to facilitate and accomplish the following objectives:

(1) Support for and direct use of local businesses;

(2) Support for and direct use of union members from multiple trades including support for and use of training and State of California approved apprenticeship programs, and pre-apprenticeship programs from within Peninsula Clean Energy's service territory; and

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3.) Northern California and the Central Valley; and

4.) California.

Preference will be given first to San Mateo County and the City of Los Banos; second, to the Nine Bay Area Counties and the County of Merced; third, to Northern California and the Central Valley; fourth, to California.

Peninsula Clean Energy will support the objectives stated above in the following ways:

c. <u>Peninsula Clean Energy Power Purchase Agreements with Third Parties</u>

Peninsula Clean Energy shall collect information from respondents to any bidding and/or RFP/RFQ process regarding past, current and/or planned efforts by project developers and their contractors to:

- Employ workers and use businesses from the Peninsula Clean Energy service territory.
- Employ properly licensed (A, B, C10, C7, C46) contractors and California Certified electricians.
- Utilize multi-trade project labor agreements on the proposed project or any prior project developments.

- Utilize local apprentices, particularly graduates of local pre-apprenticeship programs.
- Pay workers the correct prevailing wage rates for each craft, classification and type of work performed.
- Display a poster at jobsites informing workers of prevailing wage requirements.
- Provide workers compensation coverage to on-site workers.
- Support and use State of California approved apprenticeship programs.

Relevant information submitted by proposers will be used to evaluate potential workforce impacts of proposed projects with the goal of promoting fair compensation, fair worker treatment, multi-trade collaboration, and support of the existing wage base in local communities where contracted projects will be located.

d. <u>Peninsula Clean Energy Owned Generation Projects</u>

Any Peninsula Clean Energy-owned renewable development project shall prioritize and give preference to local businesses, union labor, and apprenticeship programs through multi-trade agreements and/or through multiple agreements for work. Each construction contractor or subcontractor performing work on any Peninsula Clean Energy-owned project shall prioritize and give preference to a combination of local labor, union labor and apprenticeship programs, and shall follow fair compensation practices, including proper assignment of work to crafts that traditionally perform the work. For each renewable energy project with a maximum net output of at least 1 MW (ac), Peninsula Clean Energy, its construction contractor and subcontractors shall prioritize and give preference to: 1) require of its regular workforce working on the construction of such project that at least 50% of all "journey level" employees shall be graduates of a State of California approved apprenticeship program; (2) require that its regular workforce working on the construction of such project shall be in conformance with all state and federal apprenticeship requirements, including satisfying the requirements set forth in Section 45(b)(8) of the Internal Revenue Code of 1986, as amended (taking into account the guidance issued by the Internal Revenue Service in Notice 2022-61, and any subsequent or additional guidance, including issued treasury regulations); and (3) require that the percentage of its regular workforce working on the construction of such project enrolled and participating in a local State of California approved apprenticeship program be the greater of at least 20% or the percentage required by clause (2) above. Apprenticeship programs must be approved by the State Department of Apprenticeship Standards.

e. <u>Peninsula Clean Energy Programs</u>

Peninsula Clean Energy shall use best efforts to support local businesses, union labor, and local apprenticeship programs in the implementation of its energy programs. Peninsula Clean Energy shall use best efforts to ensure each construction contractor or subcontractor performing work on any Peninsula Clean Energy program utilize local businesses, union labor, local apprenticeship, and fair compensation practices in program

implementation including proper assignment of work to crafts that traditionally perform the work.

Supply Chain Code of Conduct

Buyer is committed to ensuring that the fundamental human rights of workers are protected, including addressing the potential risks of forced labor, child labor, servitude, human trafficking and slavery across our portfolio.

Our requirements and expectations for Seller's supply chain are detailed below in our Supply Chain Code of Conduct ("**Supply Chain Code**"). Seller must comply with all applicable Laws and this Supply Chain Code, even when this Supply Chain Code exceeds the requirements of applicable Law.

These standards are derived from the United Nations Guiding Principles on Business and Human Rights, the Core Conventions of the International Labour Organization ("ILO"), including the ILO Declaration on Fundamental Principles and Rights at Work, the Solar Energy Industries Association Solar Industry Commitment to Environmental & Social Responsibility, and the Responsible Business Alliance Code of Conduct.

1. **Freely Chosen Employment**
   Forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons is not permitted. This includes transporting, harboring, recruiting, transferring, or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. There shall be no unreasonable restrictions on workers' freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company provided facilities including, if applicable, workers' dormitories or living quarters. All work must be voluntary, and workers shall be free to leave work at any time or terminate their employment without penalty if reasonable notice is given as per worker's contract. Employers, agents, and sub-agents' may not hold or otherwise destroy, conceal, or confiscate identity or immigration documents, such as government-issued identification, passports, or work permits. Employers can only hold documentation if such holdings are required by law. In this case, at no time should workers be denied access to their documents. Workers shall not be required to pay employers' agents or sub-agents' recruitment fees or other related fees for their employment. If any such fees are found to have been paid by workers, such fees shall be repaid to the worker.

2. **Young Workers**
   Child labor is not to be used in any stage of manufacturing. The term "child" refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Suppliers shall implement an appropriate mechanism to verify the age of workers. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers shall ensure proper management of student workers through proper maintenance of student records, rigorous due diligence of educational partners, and protection of students' rights in accordance with applicable laws and regulations. Suppliers shall provide appropriate support and training to all student workers. In the absence of local law, the wage rate for student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing

equal or similar tasks. If child labor is identified, assistance/remediation is provided.

3. **Working Hours**
   Studies of business practices clearly link worker strain to reduced productivity, increased turnover, and increased injury and illness. Working hours are not to exceed the maximum set by local law. Further, a workweek should not be more than 60 hours per week, including overtime, except in emergency or unusual situations. All overtime must be voluntary. Workers shall be allowed at least one day off every seven days.

4. **Wages and Benefits**
   Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. In compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates. Deductions from wages as a disciplinary measure shall not be permitted. For each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed. All use of temporary, dispatch and outsourced labor will be within the limits of the local law.

5. **Humane Treatment**
   There is to be no harsh or inhumane treatment including violence, gender-based violence, sexual harassment, sexual abuse, corporal punishment, mental or physical coercion, bullying, public shaming, or verbal abuse of workers; nor is there to be the threat of any such treatment. Disciplinary policies and procedures in support of these requirements shall be clearly defined and communicated to workers.

6. **Non-Discrimination/Non-Harassment**
   Suppliers should be committed to a workplace free of harassment and unlawful discrimination. Companies shall not engage in discrimination or harassment based on race, color, age, gender, sexual orientation, gender identity and expression, ethnicity or national origin, disability, pregnancy, religion, political affiliation, union membership, covered veteran status, protected genetic information or marital status in hiring and employment practices such as wages, promotions, rewards, and access to training. Workers shall be provided with reasonable accommodation for religious practices. In addition, workers or potential workers should not be subjected to medical tests that could be used in a discriminatory way or otherwise in violation of applicable law. This was drafted in consideration of ILO Discrimination (Employment and Occupation) Convention (No.111).

7. **Freedom of Association**
   In conformance with local law, Suppliers shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, and to engage in peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices without fear of discrimination, reprisal, intimidation, or harassment.

8. **Restricted Jurisdictions**

Supplier shall not manufacture or produce products in the Xinjiang Uyghur Autonomous Region of China, or knowingly procure goods and services mined, produced or manufactured in the same.

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: April 7, 2023
BOARD MEETING DATE: April 27, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer
Roy Xu, Director of Power Resources

SUBJECT: Approve Resolution Delegating Authority to Chief Executive Officer to Execute Energy Storage Service Agreement for an Energy Storage Project with Lockhart ESS, LLC, and any necessary ancillary documents with a Power Delivery Term of 15 years starting at the Commercial Operation Date on or about June 1, 2024, in an amount not to exceed $142 million.

RECOMMENDATION:

Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Energy Storage Service Agreement for an Energy Storage Project with Lockhart ESS, LLC, and any necessary ancillary documents with a Power Delivery Term of 15 years starting at the Commercial Operation Date on or about June 1, 2024, in an amount not to exceed $142 million.

BACKGROUND:

The Board set a goal for Peninsula Clean Energy to procure 100% of its energy supply from 24/7 renewable energy by 2025 on a 99% time-coincident basis. One set of technologies that will help Peninsula Clean Energy to meet this goal is energy storage which is intended to shift grid energy from times when there is oversupply, which generally correlates to solar production hours, to times when there is high demand for energy on the grid. Staff conducted a preliminary analysis of the necessary resources to attain this goal and found that Peninsula Clean Energy will need to procure a sufficient amount of energy storage for its portfolio. The Lockhart project will be the third standalone storage resource to be added to Peninsula Clean Energy's portfolio. Peninsula Clean Energy has executed a contract with a long-duration (8-hours or longer) storage project, a four-hour duration storage project, and two solar resources paired with storage, all of which are under development.

CPUC MTR Procurement Mandate

On June 24, 2021, the California Public Utilities Commission (CPUC) adopted D.21-06-035, and further adopted D.23-02-040 on February 23, 2023. These decisions are commonly known as the mid-term reliability (MTR) procurement mandates. They direct load serving entities (LSEs) to collectively procure 15,500 MW[1] of new resources between 2023 to 2028 to meet mid-term grid reliability needs. The decisions require that contracts have a term of at least 10 years and that resources be zero-emission or eligible under the California renewable portfolio standard (RPS). Specific category requirements were assigned to 4,500 MW of the requirement.

State-Wide MTR Procurement Requirements (MW NQC)

Procurement Category	2023	2024	2025	2026	2027	2028	Total
New Generic Capacity	2,000	6,000	1,500	2,000	2,000	-	13,500
Zero-emissions generation, generation paired with storage, or demand response resources[2]	-	-	*2,500*	-	-	-	*2,500*
New firm zero-emitting resources	-	-	-	-	-	1,000	1,000
New long-duration storage resources	-	-	-	-	-	1,000	1,000
Total Annual Net Qualifying Capacity (NQC) Requirements	***2,000***	***6,000***	***1,500***	***2,000***	***2,000***	***2,000***	***15,500***

Peninsula Clean Energy's MTR Procurement Requirements (MW NQC)

Procurement Category	2023	2024	2025	2026	2027	2028	Total
New Generic Capacity	38	113	28	35	35	-	**249**

[1] Requirement measured as net qualifying capacity (NQC) rather than nameplate capacity. The CPUC issued a report identifying what percent of a technology's nameplate capacity would count toward this requirement. This means that each LSE's required nameplate capacity is higher than the requirement identified in the decision.

[2] Zero-emissions resources required to replace Diablo Canyon must be procured by 2025 and are a subset of New Capacity Required and may occur in any of the years 2023-2025; therefore, this row is not additive with the other rows.

Zero-emissions generation, generation paired with storage, or demand response resources[3]	*-*	*-*	*47*	*-*	*-*	*-*	*47*
New firm zero-emitting resources	-	-	-	-	-	19	**19**
New long-duration storage resources	-	-	-	-	-	19	**19**
Total Annual Net Qualifying Capacity (NQC) Requirements	***38***	***113***	***28***	***35***	***35***	***38***	***287***

The generic requirement for new capacity may include standalone energy storage. Once these decisions were issued, Peninsula Clean Energy soon issued a request for offers to focus on meeting the various tranches of this procurement mandate.

The requirements were allocated to each LSE based on load share. Under the decision, Peninsula Clean Energy was allocated a requirement to bring online a total of 287 MW of new capacity by 2028. Peninsula Clean Energy is planning for the Lockhart project to satisfy about 41 MW of this total obligation, which is the amount of net qualifying capacity (NQC) that a 45 MW storage project such as Lockhart qualifies for under the MTR.

2022 Joint CCA Request for Offers

Peninsula Clean Energy collaborated with SCP, SVCE, and 3CE (the Joint CCAs) to launch a request for offers (RFO) in late 2022 targeting procurement of stand-alone energy storage resources to satisfy the MTR procurement requirements.

The Joint CCAs received a robust response to the RFO from 10 participants for 18 different projects. Staff evaluated these projects based on value to Peninsula Clean Energy, development status, project viability, project team experience, compliance with workforce policy and environmental impact.

Staff conducted extensive analysis to identify the top projects to shortlist. The Lockhart project was determined to be in the top tier of standalone energy storage projects that would provide the most value to Peninsula Clean Energy.

[3] Zero-emissions resources required to replace Diablo Canyon must be procured by 2025 and are a subset of New Capacity Required and may occur in any of the years 2023-2025; therefore, this row is not additive with the other rows.

Staff reviewed the project with the CEO and then entered into exclusive negotiations with the project. Since late 2022, Peninsula Clean Energy has worked with the project developer on negotiating the energy storage services contract.

Additionally, staff met with the Procurement Board subcommittee in April 2023 to review the recommended contract with Lockhart ESS, LLC.

Overview of Project

Project Name	Lockhart Energy Storage Project
Technology	Lithium-ion Standalone Storage
Capacity	45 MW / 180 MWh (4-hour)
Commercial Operation Date	6/1/2024
Project Owner	Lockhart ESS, LLC
Developer	Terra-Gen
Location	San Bernardino County, CA

The Lockhart Energy Storage Project is a new standalone storage project with a total discharge capacity of 45 MW, located in San Bernardino County, California. The project is adjacent to the SEGS VIII and SEGS IX solar thermal projects. SEGS VIII is being repowered as solar PV while SEGS IX is still operating as solar thermal. Lockhart will not require any new transmission infrastructure; rather it will use the existing interconnection. Peninsula Clean Energy will retain the scheduling coordination rights for the standalone storage project.

The Commercial Operation Date is June 1, 2024. The project has an executed interconnection agreement and has received a Full Capacity Deliverability Status (FCDS) allocation from the CAISO, effective upon commercial operation, meaning the project will provide resource adequacy attributes to Peninsula Clean Energy. The project will interconnect to the SCE Kramer substation. The project is expected to start construction by November 2023.

Under the contract, Peninsula Clean Energy will pay for 45 MW of storage capacity at a fixed-price rate per kW-month with no escalation, as well as a small fixed-price rate variable cost per MWh discharged, for the full term of the contract (15 years). Peninsula Clean Energy is entitled to all product attributes from the facility, including storage capacity (charging and discharging energy), ancillary services, and resource adequacy.

Developer

Lockhart ESS, LLC is a wholly owned, indirect subsidiary of Terra-Gen. The project is being developed by Terra-Gen, which has a team with a wide range of experience developing and operating various energy technologies. Terra-Gen owns over 1,600 MW of operating wind, geothermal, solar and storage projects, and operates over 1,700 MWs of renewable and storage projects across North America. Terra-Gen currently operates over 800 MW of storage projects, making it one of the leading companies operating

storage projects in the country. Terra-Gen is the owner of the Voyager 2 Wind Project, a project that PCE has contracted for 50% of the output via a third-party marketer.

Environmental Review

Peninsula Clean Energy staff worked with several environmental non-profits to develop a system for evaluating the environmental impact of projects. Specifically, we asked each bidder to provide a geospatial footprint of their project. During the evaluation period, staff studied the geospatial footprint of the project to evaluate whether the project is located in a restricted or high conflict area for renewable energy or storage development. These areas include but are not limited to:

- Protected areas at the federal, state, regional, local level (e.g., County-designated conservation areas, BLM Areas of Critical Environmental Concern, critical habitat for listed species, national, state, county parks, etc.).
- Identified and mapped important habitat and habitat linkages, especially for threatened and endangered species (either state or federally listed).

Further, projects that are located in areas designated for renewable energy development or in areas that are not suitable for other developmental activities, such as EPA re-power sites, receive positive environmental scores.

For this project, the analysis showed that the project was not located in a protected area based on the USGS Protected Areas Database[4] (PAD-US). Since this project doesn't require new transmission there is no environmental impact anticipated from interconnection and transmission.

The project has obtained all required environmental approvals from the appropriate regulatory authorities.

Workforce Requirements

Lockhart has agreed that the construction of the project will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or other similar agreement providing for terms and conditions of employment with applicable labor organizations.

DISCUSSION:

The Strategic Plan approved by the Board in 2020 set Peninsula Clean Energy's Priority One to "design a power portfolio that is sourced by 100% renewable energy by 2025 that aligns supply and consumer demand on a 24x7 basis". Energy storage will play a key role in meeting Peninsula Clean Energy's renewable energy goals by shifting an oversupply of

[4] USGS PAD-US: https://www.usgs.gov/core-science-systems/science-analytics-and-synthesis/gap/science/protected-areas

generation in the middle of the day to later hours when the energy is needed to meet demand.

The Lockhart project will provide 45 MW of energy storage capacity which means it will not directly produce generation to serve Peninsula Clean Energy's load, but it will help shift generation from the grid to serve its customers' load when it is most needed.

The Lockhart project will contribute to Peninsula Clean Energy meeting its regulatory requirements under the Mid-Term Reliability orders issued by CPUC.

FISCAL IMPACT:

The fiscal impact of the Lockhart project will not exceed $142 million over the 15-year term of the Agreement.

STRATEGIC PLAN:

The Lockhart project supports the following objectives in Peninsula Clean Energy's strategic plan:

- Priority 1: Design a power portfolio that is sourced by 100% renewable energy by 2025 that aligns supply and consumer demand on a 24/7 basis
- Power Resources Goal 1: Secure sufficient, low-cost, clean sources of electricity that achieve Peninsula Clean Energy's priorities while ensuring reliability and meeting regulatory mandates

ATTACHMENTS:

Lockhart Energy Storage Service Agreement (Redacted Version)

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION DELEGATING AUTHORITY TO CHIEF EXECUTIVE OFFICER TO EXECUTE ENERGY STORAGE SERVICE AGREEMENT FOR AN ENERGY STORAGE PROJECT WITH LOCKHART ESS, LLC, AND ANY NECESSARY ANCILLARY DOCUMENTS WITH A POWER DELIVERY TERM OF 15 YEARS STARTING AT THE COMMERCIAL OPERATION DATE ON OR ABOUT JUNE 1, 2024, IN AN AMOUNT NOT TO EXCEED $142 MILLION.

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

WHEREAS, the Peninsula Clean Energy Authority ("Peninsula Clean Energy") was formed on February 29, 2016; and

WHEREAS, Peninsula Clean Energy is purchasing energy, renewable energy, carbon-free energy, and related products and services (the "Products") to supply its customers; and

WHEREAS, Peninsula Clean Energy conducted a request for offers for renewable energy and storage resources including standalone storage and engaged in negotiations for the Lockhart project; and

WHEREAS, Peninsula Clean Energy seeks to execute a Energy Storage Service Agreement (ESSA) to procure 45 MW of 4-hour standalone storage capacity from the Lockhart project, based on project's desirable offering of products, pricing, and terms; and

WHEREAS, the Lockhart project will contribute toward the regulatory requirements set by the California Public Utilities Commission to procure new capacity by 2028 to ensure better reliability for the California grid; and

WHEREAS, staff is presenting to the Board for its review the ESSA, reference to which should be made for further particulars; and

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute the Agreement and any other ancillary documents required for said purchase of storage capacity from Lockhart ESS, LLC; and

WHEREAS, the Board's decision to delegate to the Chief Executive Officer the authority to execute the Agreement is contingent on the Lockhart ESS, LLC Board approving the Agreement's terms consistent with those presented to the Board.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to:

Execute the Agreement and any ancillary documents with Lockhart ESS, LLC with terms consistent with those presented, in a form approved by the General Counsel; and for a power delivery term of up to fifteen years, in an amount not to exceed $142 million.

* * * * * *

ENERGY STORAGE AND SERVICES AGREEMENT

COVER SHEET

Seller: Lockhart ESS, LLC, a Delaware limited liability company

Buyer: Peninsula Clean Energy Authority, a California joint powers authority

Description of Facility: An approximately forty-five (45) MW AC energy storage facility with four (4) hours of continuous discharging at such capacity, located in San Bernardino County, California (as further defined herein, the "**Facility**"), subject to reduction as set forth in Exhibit B.

Guaranteed Construction Start Date: November 1, 2023

Guaranteed Commercial Operation Date: June 1, 2024

Milestones:

Milestone	Expected Completion Date
Site Control	**Complete**
Conditional Use Permit	**Complete**
Phase II Interconnection Study Results	**Complete**
Executed Interconnection Agreement	**Complete**
Procure Major Equipment	[redacted]
Financial Close	[redacted]
Construction Start	[redacted]
Initial Synchronization	[redacted]
Commercial Operation Date	[redacted]
Deliverability Network Upgrades completed	**Complete**
Obtain Full Capacity Deliverability Status Allocation	**Complete**

Delivery Term: Fifteen (15) Contract Years

Guaranteed Storage Capacity: Forty-five (45) MW AC at four (4) hours of continuous discharging at such capacity (one hundred eighty (180) MWh).

Guaranteed Interconnection Capacity: Forty-five (45) MW

Guaranteed Round-Trip Efficiency:

Contract Year	Guaranteed Round-Trip Efficiency
1	[redacted]
2	[redacted]
3	[redacted]
4	[redacted]
5	[redacted]
6	[redacted]
7	[redacted]
8	[redacted]
9	[redacted]
10	[redacted]
11	[redacted]
12	[redacted]
13	[redacted]
14	[redacted]
15	[redacted]

The "**Storage Rate**" shall be as specified below:

Contract Years	Storage Rate ($/kW-month)
All	$[redacted]/kW-month

[redacted]

Product:

- x Charging Energy
- x Discharging Energy
- x Capacity Attributes
- x Storage Capacity
- x Ancillary Services

Guaranteed RA Amount: For each month during the Delivery Term, the Qualifying Capacity of the Facility for such month.

Scheduling Coordinator: Buyer or Buyer's Agent

Development Security: $4,050,000

Performance Security: The product of $105/kW and the Installed Storage Capacity, expressed in kW

Notice Addresses:

Seller:

Company Name: Lockhart ESS, LLC c/o Terra-Gen, LLC

Address: 437 Madison Avenue, 22nd Floor, Suite A
New York, NY 10022

Attention: Contracts Administrator
[redacted]

With a copy to:

[redacted]

Scheduling:

Company Name: Lockhart ESS, LLC c/o Terra-Gen, LLC

Attention: Naomi Brown

[redacted]

Buyer:

Peninsula Clean Energy Authority
2075 Woodside Road
Redwood City, CA 94061
ATTN: Director of Power Resources

Phone No.: 650-260-0005
Email: contracts@peninsulacleanenergy.com

With a copy to:

Peninsula Clean Energy Authority
400 County Center, 6th Floor
Redwood City, CA 94063
Attention: David Silberman, General Counsel
Fax No.: (650) 363-4034
Phone No.: (650) 363-4749
Email: dsilberman@smcgov.org

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

SELLER Lockhart ESS, LLC	BUYER Peninsula Clean Energy Authority
By: _____	By:_____ PCE Executive Officer
Name: _____	
Title: _____	

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ENERGY STORAGE AND SERVICES AGREEMENT

This Energy Storage and Services Agreement ("**Agreement**") is entered into as of **[_____]** (the "**Effective Date**"), between Seller and Buyer (each also referred to as a "**Party**" and collectively as the "**Parties**").

RECITALS

WHEREAS, Seller intends to develop, design, construct, own or otherwise have control over, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement all Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 **Contract Definitions**. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**AC**" means alternating current.

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.8(c).

"**Adjusted Capacity Payment**" has the meaning set forth in Section 3.2.

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly Controls, is Controlled by, or is under common Control with such designated Person.

"**Agreement**" has the meaning set forth in the Preamble and includes any exhibits, schedules and any written supplements hereto, and the Cover Sheet.

"**Ancillary Services**" means Regulation, Spinning Reserves, Non-Spinning Reserves, Voltage Support, and any other ancillary services that the Facility is capable of providing consistent with the Operating Restrictions, as each is defined in the CAISO Tariff.

"**Availability Incentive Payment**" has the meaning set forth in the CAISO Tariff.

"**Availability Notice**" means Seller's availability forecasts issued pursuant to Section 4.4 with respect to the Available Storage Capacity and Available Storage Capability.

"Available Storage Capability" has the meaning defined in Exhibit M.

"Available Storage Capacity" has the meaning defined in Exhibit M.

"**Bankrupt**" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

"**Buyer**" has the meaning set forth on the Cover Sheet.

"**CAISO**" means the California Independent System Operator Corporation or any successor entity performing similar functions.

"**CAISO Approved Meter**" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy delivered by the Facility to the Delivery Point adjusted for or net of Electrical Losses and Station Power, in accordance with the CAISO Tariff.

"**CAISO Charges Invoice**" has the meaning set forth in Section 4.3(d).

"**CAISO Certification**" means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services that the Facility can provide, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

"**CAISO Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

"**CAISO Operating Order**" means the "operating order" defined in Section 37.2.1.1 of the CAISO Tariff.

"**CAISO-Penalized Shortfall**" has the meaning set forth in Section 3.6(b).

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of Energy that the Facility can charge from, store or deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits. Capacity Attributes shall

also include all rights to provide and all benefits related to the provision of Ancillary Services (as defined in the CAISO Tariff) and reactive power.

"**Capacity Damages**" has the meaning set forth in Section 5 of Exhibit B.

"**Change of Control**", in the case of Seller, means any circumstance in which Seller's Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by its Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards the Ultimate Parent's ownership interest in Seller unless the Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

Notwithstanding the foregoing, a change in the Control of Seller resulting from the exercise by Lender of its remedies under its financing agreements for the Facility with Seller or an Affiliate of Seller shall not be a Change of Control hereunder; provided that the entity acquiring Control of Seller, directly or indirectly, is a Qualified Transferee and Buyer is given written Notice of the Change of Control within five (5) Business Days of its occurrence.

"**Charging Energy**" means all Energy, less Station Power and Electrical Losses, if any, delivered to the Facility pursuant to a Charging Notice, as measured by the Storage Facility Meter. All Charging Energy shall be used solely to charge the Facility.

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by Buyer or the CAISO, directing the Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction shall be in accordance with Section 4.6, the CAISO Tariff, other applicable Laws, Facility availability, and the Operating Restrictions.

"**Commercial Operation**" has the meaning set forth in Exhibit B.

"**Commercial Operation Date**" has the meaning set forth in Exhibit B.

"**Commercial Operation Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) [redacted]

"**Compliance Actions**" has the meaning set forth in Section 3.8(a).

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.8.

"**Confidential Information**" has the meaning set forth in Section 19.1.

"**Construction Start**" has the meaning set forth in Exhibit B.

"**Construction Start Date**" has the meaning set forth in Exhibit B.

"**Contract Term**" has the meaning set forth in Section 2.1.

"**Contract Year**" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

"**Control**" (including, with correlative meanings, the terms "Controlled by" and "under common Control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast more than fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of more than fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

"**Costs**" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

"**Cover Sheet**" means the cover sheet to this Agreement.

"**CPM Soft Offer Cap**" has the meaning set forth in the CAISO Tariff.

"**CPUC**" means the California Public Utilities Commission, or successor entity.

"**CPUC-Penalized Shortfall**" has the meaning set forth in Section 3.6(b).

"**CPUC System RA Penalty**" means the penalties for "System Procurement Deficiency" adopted by the CPUC in its Decision 10-06-036, as may be updated or supplemented from time to time.

"**Credit Rating**" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements), or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating, in either case by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

"**Cure Plan**" has the meaning set forth in Section 11.1(b)(iii).

"**Curtailment Order**" means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail Energy deliveries;

(b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if the Facility is interconnected to distribution or sub-transmission system) for reasons

including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's or distribution operator's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces energy delivered to or from the Facility pursuant to a Curtailment Order.

"**Daily Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"**Damage Payment**" means a liquidated damages payment to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount set forth in Section 11.3(a).

"**Day-Ahead Forecast**" has the meaning set forth in Section 4.4(b).

"**Day-Ahead Market**" has the meaning set forth in the CAISO Tariff.

"**Day-Ahead Schedule**" has the meaning set forth in the CAISO Tariff.

"**Defaulting Party**" has the meaning set forth in Section 11.1(a).

"**Delivery Point**" means the PNode designated by the CAISO for the Facility.

"**Delivery Term**" shall mean the period of Contract Years specified on the Cover Sheet, beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

"**Development Cure Period**" has the meaning set forth in Exhibit B.

"**Development Security**" means (i) cash or (ii) a Letter of Credit in the amount specified for the Development Security on the Cover Sheet, deposited with Buyer in conformance with Section 8.7.

"**Discharging Energy**" means all Energy delivered to the Delivery Point from the Facility, net of Station Power and Electrical Losses, as measured by the Storage Facility Meter.

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer or the CAISO to Seller, directing the Facility to discharge Discharging Energy at a specific MWh rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with Section 4.6, the CAISO Tariff, other applicable Laws, Facility availability, and the Operating Restrictions.

"**Early Termination Date**" has the meaning set forth in Section 11.2(a).

"**Effective Date**" has the meaning set forth on the Preamble.

"**Electrical Losses**" means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with (i) delivery of Discharging Energy to the Delivery Point and (ii) delivery of Charging Energy from the Delivery Point to the Facility.

"**Energy**" means metered electrical energy in MWh.

"**Event of Default**" has the meaning set forth in Section 11.1.

"**Facility**" means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment and Seller's rights and interests in Shared Facilities required to deliver the Product, but excluding any portions of Shared Facilities other than Seller's rights and interests thereto.

"**FERC**" means the Federal Energy Regulatory Commission or any successor government agency.

"**Flexible Capacity**" has the meaning set forth in the CAISO Tariff.

"**Flexible Capacity Category**" has the definition in Appendix A of the CAISO Tariff.

"**Flexible Resource Adequacy Benefits**" means the attributes, however defined, of a resource that can be used to satisfy the flexible resource adequacy obligations of a load serving entity, including Flexible Capacity.

"**FMM Schedule**" has the meaning set forth in the CAISO Tariff.

"**Force Majeure Event**" has the meaning set forth in Section 10.1.

"**Forced Facility Outage**" means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from providing Product and that is not the result of a Force Majeure Event.

"**Forced Labor**" has the meaning set forth in Section 13.4.

"**Forecast Product**" has the meaning set forth in Section 4.4.

"**Full Capacity Deliverability Status**" has the meaning set forth in the CAISO Tariff.

"Full Network Model" has the meaning set forth in the CAISO Tariff.

"**Future Environmental Attributes**" shall mean any and all emissions, air quality or other environmental attributes under any and all international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the Facility. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment or production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

"**Gains**" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Capacity Attributes.

"**GHG Regulations**" means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

"**Governmental Authority**" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and NERC; *provided*, *however*, that "Governmental Authority" shall not in any event include any Party.

"**Greenhouse Gas**" or "**GHG**" has the meaning set forth in the GHG Regulations or in any other applicable Laws.

"**Guaranteed Commercial Operation Date**" has the meaning set forth on the Cover Sheet, as such date may be extended by the Development Cure Period.

"**Guaranteed Construction Start Date**" has the meaning set forth on the Cover Sheet, as such date may be extended by the Development Cure Period.

"**Guaranteed Interconnection Capacity**" means the interconnection rights provided under the Interconnection Agreement for the interconnection of capacity in the amount set forth as the Guaranteed Interconnection Capacity on the Cover Sheet.

"**Guaranteed RA Amount**" has the meaning set forth on the Cover Sheet.

"**Guaranteed Round-Trip Efficiency**" has the meaning set forth on the Cover Sheet.

"**Guaranteed Storage Availability**" has the meaning set forth in Section 4.10(a).

"**Guaranteed Storage Capacity**" has the meaning set forth on the Cover Sheet, as may be adjusted pursuant to Exhibit B.

"**Imbalance Energy**" means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy or Discharging Energy deviates from the amount of Scheduled Energy.

"**Indemnified Party**" has the meaning set forth in Section 17.1.

"**Indemnifying Party**" has the meaning set forth in Section 17.1.

"**Initial Synchronization**" means the initial delivery of Energy to the Facility from the interconnection point or from the Facility to the interconnection point, as specified in the Interconnection Agreement.

"**Installed Storage Capacity**" means the maximum dependable operating capability of the Facility to discharge electric energy for four (4) consecutive hours (up to but not in excess of the Guaranteed Storage Capacity), as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit G-2 hereto provided by Seller to Buyer, as such capacity may be adjusted pursuant to Section 5 of Exhibit B.

"**Inter-SC Trade**" or "**IST**" has the meaning set forth in the CAISO Tariff.

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"**Interconnection Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System (or PTO's distribution system, as applicable) in accordance with the Interconnection Agreement.

"**Interest Rate**" has the meaning set forth in Section 8.2.

"**Joint Powers Act**" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated February 29, 2016 under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"**Law**" means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority, and includes the CAISO Tariff.

"**Lender**" means, collectively, (A) in the case of Seller, any Person (i) providing senior or subordinated construction, interim or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility, and (B) in the case of Buyer, any Person (i) providing senior or subordinated short-term or long-term debt or equity financing or refinancing for or in connection with the business or operations of Buyer, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form, and any trustee or agent acting on their behalf, and/or (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations.

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, in a form substantially similar to the letter of credit set forth in Exhibit I.

"**Licensed Professional Engineer**" means an independent, professional engineer (a) reasonably acceptable to Buyer, (b) who has been retained by, or for the benefit of, the Lenders, as their "independent engineer" for the purpose of financing the Facility, or (c) who (i) is licensed to practice engineering in the State of California, (ii) has training and experience in the power industry specific to the technology of the Facility, (iii) is licensed in an appropriate engineering discipline for the required certification being made, and (iv) unless otherwise approved by Buyer, is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility.

"**Local Capacity Area**" has the meaning set forth in the CAISO Tariff.

"**Local Capacity Area Resource**" has the meaning set forth in the CAISO Tariff.

"**Local Capacity Area Resource Adequacy Benefits**" means the attributes, however defined, of a Local Capacity Area Resource that can be used to satisfy the local resource adequacy obligations of a load serving entity.

"**Locational Marginal Price**" or "**LMP**" has the meaning set forth in the CAISO Tariff.

"**Losses**" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes.

"**Main Power Transformer**" means the Facility's main step-up transformer as depicted on the one-line diagram set forth in Exhibit P.

[redacted]

"**Milestones**" means the development activities for significant permitting, interconnection, financing and construction milestones set forth in the Cover Sheet.

[redacted]

"**Monthly Storage Availability**" has the meaning set forth in Exhibit M.

"**Monthly Unavailable Calculation Intervals**" has the meaning set forth in Exhibit M.

"**Moody's**" means Moody's Investors Service, Inc., or its successor.

"**MW**" means megawatts measured in alternating current, unless expressly stated in terms of direct current.

"**MWh**" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"**NERC**" means North American Electric Reliability Corporation, or its successor.

"**Net Qualifying Capacity**" or "**NQC**" has the meaning set forth in the CAISO Tariff.

"**Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**Non-Availability Charge**" has the meaning set forth in the CAISO Tariff.

"**Non-Defaulting Party**" has the meaning set forth in Section 11.2.

"**Notice**" shall, unless otherwise specified in this Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

"**Operating Restrictions**" means the requirements and limitations set forth on Exhibit O.

"**Other Facility(ies)**" means the electric generating or energy storage facility(ies), other than the Facility, utilizing any facilities shared with the Facility to enable delivery of energy from each such other generating or storage facility to the Delivery Point, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at each such other generating or storage facility, but (i) with respect to the Shared Facilities, excluding Seller's interests therein and (ii) excluding the real property on which each such other generating or storage facility is, or will be located, land rights and interests in land.

"**Participating Transmission Owner**" or "**PTO**" means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Southern California Edison Company.

"**Party**" has the meaning set forth in the Preamble.

"**Performance Security**" means (i) cash, or (ii) a Letter of Credit, in the amount specified for the Performance Security on the Cover Sheet, deposited with Buyer in conformance with Section 8.8.

"**Performance Security End Date**" has the meaning set forth in Section 8.8.

"**Person**" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

"**PMAX**" means the applicable CAISO-certified maximum operating level of the Facility.

"**PMIN**" means the applicable CAISO-certified minimum operating level of the Facility.

"**PNode**" has the meaning set forth in the CAISO Tariff.

"**Product**" has the meaning set forth on the Cover Sheet.

"**Progress Report**" means a progress report including the items set forth in Exhibit E.

"**Prudent Operating Practice**" means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry in the Western United States for facilities of similar size, type, and design, that, in

the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

"**Qualified Transferee**" means an entity that (a) individually or together with its Affiliates, either (i) has a Tangible Net Worth of one hundred fifty million dollars ($150,000,000) or (ii) has (A) a Tangible Net Worth of fifty million dollars ($50,000,000) and (B) a Credit Rating of A2 or higher by Moody's or A- or higher by S&P, if rated by only one such entity, or a Credit Rating of A2 or higher by Moody's and A- or higher by S&P, if rated by both such entities, and, in any case, (b) is not a public utility regulated by the CPUC or an Affiliate thereof, and (c) either (i) has, or retains to operate the Facility a Person that has, at least three (3) years of experience operating at least two (2) or more storage facilities of the same technology and with a capacity of at least as much Installed Storage Capacity as the Facility, or (ii) has confirmed in writing to Buyer that an Affiliate of Terra-Gen, LLC will continue to operate the Facility following the change of Control of Seller involving such Qualified Transferee.

"**Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

"**RA Deficiency Amount**" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.6(b).

"**RA Guarantee Date**" means the Commercial Operation Date.

"**RA Plan**" has the meaning set forth for "Resource Adequacy Plan" in the CAISO Tariff.

"**RA Shortfall**" means, for a given Showing Month, the difference, expressed in kW, of (i) the Guaranteed RA Amount for such month, minus (ii) any portion of the Guaranteed RA Amount that cannot be shown on Buyer's monthly or annual RA Plan for such month [redacted], minus (iii) the Resource Adequacy Benefits of the Facility for such month able to be shown on Buyer's monthly or annual RA Plan to the CAISO and CPUC, minus (iv) the amount of Replacement RA provided by Seller for such month.

"**RA Shortfall Month**" means the applicable calendar month following the RA Guarantee Date during which there is a RA Shortfall hereunder for purposes of calculating an RA Deficiency Amount under Section 3.6(b).

"**RA Substitute Capacity**" has the meaning set forth in the CAISO Tariff.

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Reimbursable Station Power**" means, for each month during the Delivery Term, (a) the amount of Station Power in a given month for which Seller was not charged as retail power pursuant to the retail service schedule for the Facility, [redacted].

"**Reimbursable Station Power Cost**" means, for each month during the Delivery Term, the product of (a) the Reimbursable Station Power for such month, expressed in kWh, multiplied by (b) Buyer's average cost of Charging Energy for such month, expressed in dollars per kWh ($/kWh).

"**Remedial Action Plan**" has the meaning set forth in Section 2.4.

"**Replacement RA**" means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month for which the Replacement RA is being provided. Replacement RA shall (i) include, if applicable, Flexible Resource Adequacy Benefits that are of the same system or local designation, Flexible Capacity Category, and Resource Category as the Facility; (ii) be from a resource located in the same Transmission Access Charge Area (as described in the CAISO Tariff) as the Facility and, (iii) to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, be located in the same Local Capacity Area as the Facility. Replacement RA shall not be provided from any generating facility or unit that utilizes coal or coal materials as a source of fuel.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 19-10-021, and any subsequent CPUC ruling or decision or by any other entity including CAISO, and shall include System Resource Adequacy Benefits, Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits associated with the Facility.

"**Resource Category**" means the maximum cumulative capacity and resource categories (commonly known as "MCC buckets") for system and local resource adequacy as well as categories of must-offer for flexible resource adequacy described in the most recent filing guide for system, local, and flexible resource adequacy compliance filings issued or published on the CPUC's website by the CPUC or its staff specifying the guidelines, requirements, and instructions for load serving entities to demonstrate compliance with the CPUC's resource adequacy program.

"**Resource ID**" has the meaning set forth in the CAISO Tariff.

"**Round-Trip Efficiency**" [redacted].

"**RTE Shortfall Payment**" has the meaning set forth in Exhibit Q.

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

"**Schedule**" has the meaning set forth in the CAISO Tariff.

"**Scheduled Energy**" means the Energy reflected in a final Day-Ahead Schedule, FMM Schedule, and/or any other financially binding CAISO Schedule, market instruction or dispatch for the Facility for a given period of time.

"**Scheduled Maintenance**" has the meaning set forth in Section 6.1(a).

"**Scheduling Coordinator**" or "**SC**" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

"**Secondary Unavailability**" has the meaning set forth in Exhibit M.

"**Security Interest**" has the meaning set forth in Section 8.9.

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0).

"**Settlement Interval**" has the meaning set forth in the CAISO Tariff.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

"**Shared Facilities**" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy to the Delivery Point, including the Interconnection Facilities and the Interconnection Agreement itself, if applicable, that are used in common with third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

"Showing Deadline" means the initial deadline that a Scheduling Coordinator must meet to submit its RA Plan, as established by CAISO or any other Governmental Authority. For illustrative purposes only, as of the Effective Date, the CAISO monthly Showing Deadline is approximately 45 days prior to the RA delivery month.

"**Showing Month**" shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

"**Site**" means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed

Construction Start Date Certificate to Buyer, in substantially the form of the Form of Construction Start Date Certificate in Exhibit H.

"**Site Control**" means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

"**SP-15**" means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

"**Station Power**" means all energy that is used within the Facility to power lights, motors, control systems, thermal regulation equipment and other auxiliary electrical loads.

"**Station Power Credit**" means, for each month during the Delivery Term, an amount equal to the product of (a) the current Storage Capacity (in kW) for such month, multiplied by (b) the Storage Rate, multiplied by (c) one percent (1%).

[redacted]

"**Storage Availability Adjustment**" has the meaning set forth in Exhibit M.

"**Storage Capacity**" means the maximum dependable operating capability of the Facility (expressed in MW AC) to discharge electric energy at the maximum discharge rate that can be sustained for four (4) consecutive hours, as the same is to be established as of the Commercial Operation Date and adjusted from time to time pursuant to Exhibit N to reflect the results of the most recently performed Storage Capacity Test; provided that such Storage Capacity will be limited to the lesser of (a) the Guaranteed Storage Capacity, and (b) the Facility's then current PMax in the Facility's CAISO's Master Data File and Resource Data Template (or successor data systems).

"**Storage Capacity Payment**" has the meaning set forth in Section 3.2.

"**Storage Capacity Test**" or "**SCT**" means any test or retest of the capacity [redacted] of the Facility conducted in accordance with the testing procedures, requirements and protocols set forth in Exhibit N.

"**Storage Facility Meter**" means the CAISO Approved Meter (with a 0.3 accuracy class), sufficient for monitoring, recording and reporting, in real time, the amount of (i) Charging Energy, (ii) Discharging Energy and (iii) Energy from the grid that serves Station Power. For clarity, the Facility may include multiple measurement devices and calculations that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean

all such measurement devices and calculations and the aggregated data of all such measurement devices and calculations, taken together.

"**Storage Rate**" has the meaning set forth on the Cover Sheet.

"**Stored Energy**" means the electric energy in the Facility available to be discharged as Discharging Energy.

"**Stored Energy Level**" means, at a particular time, the amount of electric energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

"**Subsequent Purchasers**" means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

"**Supplementary Storage Capacity Test Protocol**" has the meaning set forth in Exhibit N.

"**Supply Plan**" has the meaning set forth in the CAISO Tariff.

"**System Emergency**" means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

"System Resource Adequacy Benefits" means the attributes, however defined, of a resource that can be used to satisfy the resource adequacy obligations of a load serving entity, other than Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits.

"**Tangible Net Worth**" means the tangible assets (for example, not including intangibles such as goodwill and rights to patents or royalties) that remain after deducting liabilities as determined in accordance with generally accepted accounting principles.

"**Tax**" or "**Taxes**" means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

"**Terminated Transaction**" has the meaning set forth in Section 11.2(a).

"**Termination Payment**" has the meaning set forth in Section 11.3(b).

"Total Calculation Intervals" has the meaning set forth in Exhibit M.

"**Transmission System**" means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

"**Ultimate Parent**" means (a) Terra-Gen, LLC from the Effective Date until Terra-Gen, LLC no longer Controls, directly or indirectly, Seller, and (b) following the date on which Terra-Gen, LLC no longer Controls, directly or indirectly, Seller, the entity that does Control, directly or indirectly, Seller and that is not Controlled by any other entity.

[redacted].

"**WECC**" means the Western Electricity Coordinating Council or its successor.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars, and references to a LMP shall mean the LMP at the Delivery Point unless expressly provided otherwise;

(k) the expression "and/or" when used as a conjunction shall connote "any or all of;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**").

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for three (3) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller shall have achieved an Installed Storage Capacity that is no less than ninety-five percent (95%) of the Guaranteed Storage Capacity;

(b) Seller shall have delivered to Buyer certificates from a Licensed Professional Engineer substantially in the form of Exhibits G-1 and G-2;

(c) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(d) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement, including all modifications and amendments thereto, delivered to Buyer;

(e) Authorization to parallel the Facility was obtained by the Participating Transmission Owner prior to the Commercial Operation Date.

(f) The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by the Commercial Operation Date.

(g) The CAISO has provided notification supporting Commercial Operation.

(h) Buyer, or its designee, is the Scheduling Coordinator for the Facility; provided that if this requirement is not met because of Buyer's (or its designee's) actions or failure to take actions, and this is the only requirement for Commercial Operation that has not been met, Seller shall be entitled to a day for day extension of the Guaranteed Commercial Operation Date for such Buyer (or its designee) actions or failure to act.

(i) Seller shall have delivered to Buyer a certificate signed by an authorized representative of Seller stating that Seller is in compliance with the requirements of the conditional use permit for the Facility;

(j) Seller shall have caused the Facility to be included in the Full Network Model and has ability to offer Bids into CAISO Day-Ahead Markets and Real-Time Markets.

(k) Seller shall have completed all necessary steps to provide Ancillary Services from the Facility, including completing the certification and testing requirements in Section 8 and Appendix K of the CAISO Tariff;

(l) Seller has delivered the Performance Security to Buyer;

(m) Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any.

2.3 **Progress Reports**. Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (b) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. In addition, Seller shall provide to Buyer (i) a copy of the environmental impact report and the conditional use permit for the Facility promptly

after such documents become available to Seller, and (ii) a plan that is reasonably acceptable to Buyer for the proper recycling and disposal of all project components, equipment, and materials at the end of the useful life of the Facility.

2.4 **Remedial Action Plan**. If Seller misses two (2) or more Milestones, or misses any one (1) Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date (or the thirtieth (30th) day after the missed Milestone completion date, as applicable), a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), and Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. If the missed Milestone(s) is not the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date, and so long as Seller complies with its obligations under this Section 2.4, then Seller shall not be considered in default of its obligations under this Agreement as a result of missing such Milestone(s).

ARTICLE 3
PURCHASE AND SALE

3.1 **Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller all of the Product. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement RA. **Compensation**. Buyer shall compensate Seller for the Product in accordance with this Section 3.2. For each month of the Delivery Term, Buyer shall pay Seller an amount equal to: (a)(i) the Storage Rate multiplied by (ii) the current Storage Capacity (in kW) for such month, multiplied by (iii) the applicable Storage Availability Adjustment determined in accordance with Exhibit M for such month (the "**Adjusted Capacity Payment**"), minus (b) the applicable RTE Shortfall Payment determined in accordance with Exhibit Q (if applicable) for such month, [redacted], minus (d) the Reimbursable Station Power Cost for such month, [redacted] minus (e) the Station Power Credit for such month (such total amount, the "**Storage Capacity Payment**"). The Storage Capacity Payment constitutes the entirety of the amount due to Seller from Buyer for the Product.

3.3 **Imbalance Energy**.

(a) Buyer and Seller recognize that from time to time the amount of delivered Energy will deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Subject

to Section 3.3(b), to the extent there are such deviations, any CAISO costs or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

(b) If Imbalance Energy results from Seller's failure to comply with its obligations under this Agreement or any outage or reduction in the availability of the Facility that is not communicated to Buyer at least one hour prior to the deadline to submit Schedules to CAISO, then Seller will be responsible for and shall pay directly or promptly reimburse Buyer (and Buyer may offset amounts owed to Seller) for the aggregate Imbalance Energy charges assessed, [redacted], during such period of noncompliance and reasonably attributable to such noncompliance within the applicable Contract Year; [redacted]. At either Party's request, the Parties will cooperate to develop a written administrative protocol to effectuate the Parties' agreement with respect to Imbalance Energy.

3.4 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to Section 3.4(b), Buyer shall have the right to obtain such Future Environmental Attributes without any adjustment to the Storage Rate paid by Buyer under this Agreement. Subject to Section 3.4(b), Seller shall take all reasonable actions necessary to realize the full value of such Future Environmental Attributes for the benefit of Buyer, and shall cooperate with Buyer in Buyer's efforts to do the same.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.4(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) the process for Buyer to reimburse Seller for any incremental expenses incurred by Seller (not including Seller's overhead costs for administrative tasks) associated with providing such Future Environmental Attributes; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.5 **Capacity Attributes**. Seller shall request Full Capacity Deliverability Status in connection with the Facility in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Subject to Section 3.8, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility throughout the Delivery Term.

(b) Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller.

Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) For the duration of the Delivery Term, Seller shall maintain an interconnection capacity under its Interconnection Agreement of at least the amount of the Guaranteed Interconnection Capacity.

(e) If, as a result of Scheduled Maintenance, CAISO requires RA Substitute Capacity in connection with Seller's provision of Resource Adequacy Benefits to Buyer from the Facility, Seller shall provide such RA Substitute Capacity in accordance with applicable CAISO requirements, except to the extent that RA Substitute Capacity is required due to Buyer or Buyer's SC's failure to timely provide CAISO the Facility outage information provided by Seller to Buyer or Buyer's SC. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling Scheduled Maintenance or other outage of the Facility. Buyer shall notify Seller within three (3) Business Days after becoming aware of an obligation by Seller to provide RA Substitute Capacity. Upon request by Seller, Buyer shall use commercially reasonable efforts to secure, on Seller's behalf, RA Substitute Capacity; provided that Seller shall reimburse Buyer for all out-of-pocket costs, including broker and outside counsel costs, associated with such RA Substitute Capacity, except to the extent that RA Substitute Capacity is required due to Buyer or Buyer's SC's failure to timely provide CAISO the Facility outage information provided by Seller to Buyer or Buyer's SC. If Seller declines to provide RA Substitute Capacity, and notifies Buyer to that effect no less than five (5) Business Days before the applicable Showing Deadline, then Buyer will not include the Facility (or, if applicable, the portion of the Facility) in its Supply Plan for the Facility and Seller's sole liability will be payment of the RA Deficiency Amount for such RA Shortfall pursuant to Section 3.6, except to the extent that RA Substitute Capacity is required due to Buyer or Buyer's SC's failure to timely provide CAISO the Facility outage information provided by Seller to Buyer or Buyer's SC.

(f) If Seller anticipates it will have an RA Shortfall in any month of the Delivery Term, Seller may provide Replacement RA up to the anticipated RA Shortfall, provided (i) Seller provides Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit K at least seventy-five (75) days before the applicable Showing Month, and (ii) Replacement RA shall not exceed [redacted] of the Resource Adequacy Benefits provided during any Contract Year.

3.6 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. Notwithstanding Seller's obligations set forth in Section 4.3 or anything to the contrary herein, the Parties acknowledge and agree that if Seller has failed to obtain Full Capacity Deliverability Status for the Facility by the RA Guarantee Date, or if Seller otherwise fails to provide Resource Adequacy Benefits (or Replacement RA in lieu thereof) and such failure results in an RA Shortfall hereunder, then Seller shall pay to Buyer

the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer. Notwithstanding the foregoing, in lieu of any RA Deficiency Amount payable to Buyer, for the first and/or second month of the Delivery Term, to the extent that Seller fails to provide Resource Adequacy Benefits (or Replacement RA in lieu thereof) solely due to the CAISO and/or CPUC registration process for new resources, the Storage Rate during such months for such RA Shortfall shall be fifty percent (50%) of the otherwise applicable Storage Rate.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the sum of:

(i) For any portion of the RA Shortfall for which Buyer incurs a CPUC System RA Penalty ("**CPUC-Penalized Shortfall**"), Seller's pro rata share of the amount of such CPUC System RA Penalty for such month actually incurred by Buyer (which, for the avoidance of doubt, shall be zero (0) if Buyer does not incur any CPUC System RA Penalty), plus,

(ii) For any portion of the RA Shortfall for which Buyer incurs CAISO costs, charges or penalties associated with such shortfall ("**CAISO-Penalized Shortfall**") Seller's pro rata share of the amount of such CAISO costs, charges or penalties associated with the RA Shortfall for such month actually incurred by Buyer (which, for the avoidance of doubt, shall be zero (0) if Buyer does not incur any CAISO costs, charges or penalties associated with the RA Shortfall), plus

(iii) For any RA Shortfall which is not CPUC-Penalized Shortfall and/or CAISO-Penalized Shortfall, and for which Buyer purchased replacement Resource Adequacy Benefits, the amount of Buyer's cost of such replacement Resource Adequacy Benefits; *provided*, Buyer shall have obtained at least three (3) bona fide price quotes for such replacement Resource Adequacy Benefits, and the portion of the RA Deficiency Amount pursuant to this Section 3.6(b)(iii) shall not exceed the lowest of the three price quotes, plus

(iv) For any RA Shortfall which is not CPUC-Penalized Shortfall and/or CAISO-Penalized Shortfall, and for which Buyer did not purchase replacement Resource Adequacy Benefits, the greater of (A) the product of (x) such portion of the RA Shortfall multiplied by (y) the CPM Soft Offer Cap, and (B) the prevailing market value of such RA Shortfall, as reasonably determined by Buyer.

(c) For any Showing Month with respect to which Seller owes to Buyer an RA Deficiency Amount, to the extent (i) the actual mechanical or operational unavailability of the Facility for such Showing Month is directly correlated with any NQC reduction for purposes of determining the RA Deficiency Amount arising out of any such month, and (ii) such actual mechanical or operational unavailability of the Facility corresponds to Unavailable Calculation Intervals during such Showing Month, then the RA Deficiency Amount shall be reduced by an amount equal to: [(A x B) – C] x D/E), where:

A = The Storage Rate

B = The Storage Capacity (in kW) for such month

C = The Adjusted Capacity Payment for such month

D = The Monthly Unavailable Calculation Intervals during such Showing Month which corresponded to NQC reduction for purposes of determining the RA Deficiency Amount in such month

E = The total Monthly Unavailable Calculation Intervals for such month;

provided, in no event shall the RA Deficiency Amount be less than zero dollars ($0).

3.7 **Buyer's Re-Sale of Product**. Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.7, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement as a result of such non-compliance if Buyer had not resold the Product.

3.8 **Compliance Expenditure Cap**. If a change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Capacity Attributes [redacted], then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Installed Storage Capacity ("**Compliance Expenditure Cap**").Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.8(c) within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted

Compliance Costs.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept at the Delivery Point all Product. Each Party shall perform all obligations under this Agreement, including all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

4.2 **Title and Risk of Loss**. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Title to and risk of loss related to the Charging Energy, if any, shall pass and transfer from Buyer to Seller at the Delivery Point.

4.3 **Scheduling Coordinator Responsibilities**.

(a) Buyer as Scheduling Coordinator for the Facility. Prior to the Commercial Operation Date, Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility. Upon the Commercial Operation Date, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the Commercial Operation Date, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility effective as of the Commercial Operation Date, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Commercial Operation Date. The Parties acknowledge that they will need to provide the CAISO a fixed date for the transition of the Scheduling Coordinator for the Facility and that the actual Commercial Operation Date may be later than the date on which Buyer or its designee becomes recognized by CAISO as the Scheduling Coordinator for the Facility. The Parties will cooperate reasonably to minimize any such period and to coordinate CAISO scheduling for the Facility during such period, and Buyer will pass through to Seller all CAISO settlements relating to the Facility with respect to the period prior to the Commercial Operation Date promptly after Buyer or its designee receives such settlements from the CAISO. On and after the Commercial Operation Date, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and

Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Any operational instruction provided telephonically to Seller by Buyer or Buyer's SC must be followed by a confirming written instruction.

(b) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, Forced Facility Outages, Forced Facility Outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below and in Section 3.3(b), Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, fees, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility during the Delivery Term or as a result of Buyer's or Buyer's SC's failure to abide by the CAISO Tariff or this Agreement. Seller shall be responsible for all CAISO penalties or fees resulting from any failure by Seller to abide by the CAISO Tariff or this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account (except to the extent any Non-Availability Charges are attributable to Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller that are not in compliance with this Agreement, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with the CAISO related to the Facility with respect to the Delivery Term. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement, including Section 3.3(b). CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under Section 4.3(e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices, which will be satisfied by Buyer netting or offsetting any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to

Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as Seller's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent, not to be unreasonably withheld.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

4.4 **Forecasting**. Seller shall provide the forecasts described below. Seller's (i) Available Storage Capacity and (ii) Available Storage Capability forecasts (items (i) and (ii) collectively referred to as the "**Forecasted Product**") shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Forecasted Product accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Monthly Forecast of Available Storage Capacity and Capability. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Forecasted Product for each day of the following month in the form attached hereto as Exhibit L-1 and L-2, or as reasonably requested by Buyer.

(b) Daily Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Forecasted Product for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the

next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Available Storage Capacity and Available Storage Capability.

(c) Real-Time Forecast. During the Delivery Term, Seller shall notify Buyer of any changes in Forecast Product of one (1) MW or more, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Storage Capacity or Available Storage Capability, as applicable, the expected end date and time of such event, the expected Available Storage Capacity in MW or the expected Available Storage Capability in MWh, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Notices and changes to Available Storage Capacity and Available Storage Capability shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.4(c), then Seller shall send such communications by telephone and e-mail to Buyer.

4.5 **Curtailment**.

(a) General. Seller agrees to reduce its consumption of Charging Energy and its delivery of Discharging Energy by the amount and for the period set forth in any Curtailment Order.

(b) Failure to Comply. If Seller fails to comply with a Curtailment Order that has been delivered to Seller as a Charging Instruction or Discharging Instruction in compliance with this Agreement, then, without duplication of costs owed by Seller under other provisions of this Agreement, Seller shall reimburse Buyer for (i) the aggregate Imbalance Energy charges assessed, [redacted], during such period of noncompliance and reasonably attributable to such noncompliance, [redacted] (ii) any penalties or other charges resulting from such non-compliance, and (iii) except to the extent already included in clause (i), the cost of any Charging Energy associated with Seller's charging or discharging of the Facility during such period of noncompliance.

(c) Seller Equipment Required for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO and Buyer's SC, including an electronic signal conveying

real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions; provided, however, that Seller will not be required to acquire any such facilities, communications links and other equipment, or implement such protocols and practices if they are not required for Seller's compliance with the CAISO Tariff and would cause Seller to incur any increased costs or expenses. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with the prior sentence, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall promptly repair and replace as necessary such facilities, communication links or other equipment, and shall notify Buyer as soon as Seller discovers any defect. If Buyer notifies Seller of the need for maintenance, repair, or replacement of any such facilities, communication links or other equipment, Seller shall repair or replace such equipment as necessary within five (5) days of receipt of such Notice; provided that if Seller is unable to do so, then Seller shall make such repair or replacement as soon as reasonably practical. Seller shall be liable pursuant to Section 4.5(b) for failure to comply with a Curtailment Order during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies to the extent that such non-compliance results in a failure to comply with a Curtailment Order and associated liability under Section 4.5(b); provided, however, that Seller will not have any liability for any failure to comply to the extent that it results from a failure of CAISO, Buyer, or Buyer's SC facilities, communications links or other equipment, protocols or practices utilized to provide the Curtailment Order to Seller. A Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.6 **Charging and Discharging Energy**.

(a) During the Delivery Term, Buyer will be the Scheduling Coordinator for the Facility and will have sole and exclusive rights to provide Charging Notices and Discharging Notices and to bid and schedule the Facility in CAISO markets, subject to the terms of this Agreement, including the Operating Restrictions.

(b) Seller shall comply with Charging Notices and Discharging Notices that comply with the terms of this Agreement (including the Operating Restrictions). Upon receipt of a valid Charging Notice, Seller shall accept the Charging Energy at the Facility in accordance with the terms of this Agreement (including the Operating Restrictions), at the times and in the quantities specified in such Charging Notice. Upon receipt of a valid Discharging Notice, Seller shall deliver the Discharging Energy to the Delivery Point in accordance with the terms of this Agreement (including the Operating Restrictions), at the times and in the quantities specified in such Discharging Notice.

(c) Subject to compliance with the CAISO Tariff, other applicable Laws, Facility availability and the Operating Restrictions, Buyer will have the right to direct Seller to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided that Buyer's right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this

Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

(d) Seller shall not charge the Facility during the Delivery Term other than pursuant to a valid Charging Notice or in connection with a Storage Capacity Test (for which Seller may request a Charging Notice from Buyer), or pursuant to a notice from CAISO, the PTO, or any other Governmental Authority, which will be deemed to have been provided by Buyer for all purposes hereunder (except in connection with any Storage Capacity Test requested by Seller). If, during the Delivery Term, Seller (i) charges the Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice (except as permitted in the first sentence of this Section 4.6(d)), or (ii) charges the Facility in violation of the first or second sentence of Section 4.6(b), then, in addition to any other costs and charges for which Seller is responsible, including Imbalance Energy costs and other amounts specified in Section 4.3(c) but without duplication of costs owed by Seller under other provisions of this Agreement, and without limiting any of Buyer's other rights under this Agreement:

(i) Seller shall be responsible for all Energy costs associated with such charging of the Facility; and

(ii) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy).

(e) Subject to compliance with the CAISO Tariff, other applicable Laws, Facility availability and the Operating Restrictions, Buyer will have the right to direct Seller to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(f) Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice or in connection with a Storage Capacity Test (for which Seller may request a Discharging Notice from Buyer), or pursuant to a notice from CAISO, the PTO, or any other Governmental Authority, which will be deemed to have been provided by Buyer for all purposes hereunder (except in connection with any Storage Capacity Test requested by Seller). Discharging for Station Power may occur only as specified in Section 6.4. In the case of a Storage Capacity Test, Buyer shall pay for costs associated with the Charging Energy and may retain any revenue from the discharge of such Energy (adjusted for efficiency losses) pursuant to a valid Discharging Notice; provided that (i) Seller shall pay the costs associated with the Charging Energy and may retain any revenue from the discharge of such Energy (adjusted for efficiency losses), and (ii) the Facility shall be deemed unavailable for purposes of calculating the Monthly Storage Availability pursuant to Exhibit M, if (A) Seller initiates the tests in accordance with Exhibit N or (B) a Buyer-initiated test indicates that the Storage Capacity is two percent (2%) or more lower than the then-current Storage Capacity. If, during the Delivery Term, Seller (i) discharges the Facility to a Stored Energy Level less than the Stored Energy Level provided for in the Discharging Notice (except as permitted in the first or second sentence of this Section 4.6(f)),

or (ii) discharges the Facility in violation of the first or second sentence of this Section 4.6(f), then, in addition to any other costs and charges for which Seller is responsible, including Imbalance Energy costs and other amounts specified in Section 4.3(c) but without duplication of costs owed by Seller under other provisions of this Agreement, and without limiting any of Buyer's other rights under this Agreement:

(i) Buyer shall retain any positive revenues received from CAISO or otherwise associated with such discharge; and

(ii) Seller shall be responsible for and reimburse Buyer for all Energy costs associated with charging the Facility back to the Stored Energy Level specified by Buyer before the non-permitted discharge.

(g) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Discharging Notices or Charging Notices applicable to such Settlement Interval (but not over Charging Notices or Discharging Notices which are consistent with such Curtailment Orders), and Seller shall have no liability for violation of this Section 4.6 or any Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Curtailment Order consistent with the Operating Restrictions and the Curtailment Order.

(h) If Buyer or Buyer's SC receives notice from CAISO of a required test for any Ancillary Services, Buyer or Buyer's SC must provide Seller telephonic Notice of such test and any related information provided by CAISO within two (2) minutes after receipt of such notice from CAISO and subsequently provide written confirmation of such test and any related information provided by CAISO.

4.7 **Reduction in Delivery Obligation**.

For the avoidance of doubt, and in no way limiting Sections 3.1, 3.2, or 11.1(b):

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of and to the extent required by Scheduled Maintenance on the Facility previously agreed to between Buyer and Seller.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during and to the extent required by any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration and extent (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of and to the extent required by System Emergency or upon Notice of a Curtailment Order, or pursuant to the terms of the Interconnection Agreement or applicable tariff. In the event of a System Emergency, anticipated System Emergency, or other event or circumstance in which CAISO determines that there is or may be an

imminent need for Energy supplies on the CAISO Grid, Seller shall use reasonable efforts to make the Product fully available, including by cancelling or deferring any Facility maintenance.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during and to the extent required by any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.8 **Financial Statements**. Seller shall provide to Buyer, [redacted], Seller's (or Seller's Affiliate's, if Seller's financials are consolidated with such Affiliate) most recent unaudited quarterly and annual audited [redacted] financial statements (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied. If such financials are older than the most recently completed calendar quarter or year, as applicable, Seller shall also provide unaudited quarterly within sixty (60) days following the end of the then-current quarter and/or annual audited [redacted] financial statements within one hundred twenty (120) days following the end of the then-current calendar year, as applicable.

4.9 **Access to Data**.

(a) Commencing on the Commercial Operation Date, and continuing throughout the Delivery Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below on a real-time basis; provided that Seller shall agree to make and bear the cost of (to the extent such changes are required by Applicable Law) changes to any of the data delivery provisions below, as requested by Buyer, throughout the Delivery Term, which changes Buyer determines are necessary to forecast output from the Facility, and comply with Law, provided, however, that Seller will not be required to make any changes that are not required by Applicable Law that would require Seller to incur any material incremental costs or expenses unless Buyer agrees to reimburse Seller for such incremental costs or expenses:

(i) real time, read-only access to transformer availability, any other facility availability information;

(ii) real time, read-only access to Charging Energy, Discharging Energy, Facility state-of-charge, and battery rack and inverter status (online or offline) information collected by the supervisory control and data acquisition (SCADA) system for the Facility; provided that if Buyer is unable to access the Facility's SCADA system, then upon written request from Buyer, Seller shall provide such information to Buyer in 1 minute intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back up for each flat file submittal;

(iii) read-only access to the Storage Facility Meter and all Facility meter data at the Site; and

(iv) full, real time access to the Facility's Scheduling and Logging for the CAISO (OMS) client application, or its successor system.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Facility's monthly actual Available Storage Capacity in a form reasonably acceptable to Buyer.

(b) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 4.9, which shall be available on a minimum time interval of one hour basis or an hourly average basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(c) Installation, Maintenance and Repair.

(i) Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 4.9(a) of this Agreement.

(ii) Seller shall maintain the telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Buyer's designee to enable Buyer to meet current CAISO scheduling requirements. Seller shall promptly repair and replace as necessary such telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(iii) If Buyer notifies Seller of the need for maintenance, repair or replacement of the telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice; provided that if Seller is unable to repair or replace such equipment within five (5) days, then Seller shall make such repair or replacement as soon as reasonably practical; provided further that Seller shall not be relieved from liability for any Imbalance Energy costs incurred under Section 3.3(b) during this additional period for repair or replacement.

(iv) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of verbal or written communication, including cellular communications from onsite personnel, facsimile, or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, until the telecommunications link is re-established.

(d) Seller agrees and acknowledges that Buyer may seek and obtain from third parties any information relevant to its duties as Scheduling Coordinator for Seller, including from the Participating Transmission Operator. Seller shall execute within a commercially reasonable timeframe upon request such instruments as are reasonable and necessary to enable Buyer to obtain from the Participating Transmission Operator information concerning Seller and the Facility that may be necessary or useful to Buyer in furtherance of Buyer's duties as Scheduling Coordinator for the Facility.

4.10 **Storage Availability and Efficiency.** The provisions of this Section 4.10 apply during the Delivery Term.

(a) Storage Availability. During the Delivery Term, the Facility shall maintain a Monthly Storage Availability (calculated in accordance with Exhibit M) during each month of no less than [redacted] ninety-eight percent (98%) [redacted] (the "**Guaranteed Storage Availability**"). If, in any month after the Commercial Operation Date, the Monthly Storage Availability is less than the Guaranteed Storage Availability, then, except as provided in Section 11.1(b)(iii), Buyer's sole and exclusive remedy (and Seller's sole and exclusive liability) for such shortfall shall be the application of the Storage Availability Adjustment to reduce the Storage Capacity Payment due for the Product as provided in Section 3.2.

(b) Round-Trip Efficiency. During the Delivery Term, the Facility shall maintain a Round-Trip Efficiency (calculated in accordance with Exhibit N) during each month of no less than the Guaranteed Round-Trip Efficiency. If, in any month during the Delivery Term, the Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency, then, except as provided in Section 11.1(b)(iv), Buyer's sole and exclusive remedy (and Seller's sole and exclusive liability) for such shortfall shall be the RTE Shortfall Payment calculated in accordance with Exhibit Q.

4.11 **Storage Capacity Tests**.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit N. Thereafter, Seller and Buyer shall have the right to conduct additional Storage Capacity Tests in accordance with Exhibit N.

(b) Buyer shall have the right to send one or more representatives to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representatives witnessing any Storage Capacity Test.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit N. If the actual capacity [redacted] determined pursuant to a Storage Capacity Test deviates from the then current Storage Capacity [redacted], then the actual capacity [redacted], as applicable, determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Capacity in the case of the Storage Capacity) shall become the new Storage Capacity or Round-Trip Efficiency, as applicable, effective as of the first day following the completion of the Storage Capacity Test, for all purposes under this Agreement, including compensation under Section 3.2 until the next such Storage Capacity Test.

4.12 **Facility Modifications**. Seller shall provide Buyer written Notice prior to modifying all or any part of the Facility, and Seller shall not make any modifications to the Facility without Buyer's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed, if such modification would have a material [redacted] impact on the performance of the Facility, as determined by Buyer in its reasonable discretion; *provided*, repair, replacement, or augmentation of Facility equipment with similar equipment pursuant to maintenance or equipment warranty services shall not be subject to this Section 4.12. [redacted]

[redacted].

4.13 **Ancillary Services**. Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Delivery Term so as to be able to provide such Ancillary Services in accordance with the specifications set forth in the Facility's initial CAISO Certification associated with the Installed Storage Capacity. Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein and without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any costs Seller incurs in connection with conducting such additional CAISO Certification.

4.14 **Workforce Agreement**. The Parties acknowledge that in connection with Buyer's energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, or similar agreement, providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof. Seller shall provide documentation reasonably satisfactory to Buyer demonstrating Seller's compliance with the requirements of this Section 4.14.

4.15 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities may be subject to shared facilities and/or co-tenancy agreements entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties. If applicable, Seller agrees that any agreements regarding Shared Facilities (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, (ii) shall provide for separate metering of the Facility; (iii) shall not limit Buyer's ability to provide Charging Notices or Discharging Notices for the Facility; (iv) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource ID; and (iv) shall provide that any curtailment or restriction of Shared Facility capacity not attributable to a specific project or projects shall be allocated to all generating or storage facilities utilizing the Shared Facilities based on their pro rata allocation of the Shared Facility capacity prior to such curtailment or reduction. Seller shall not, and shall not permit any Affiliate of Seller to, allocate to other Persons a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements, minus the Guaranteed Interconnection Capacity.

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product

to Buyer, that are imposed on Product prior to delivery or making available to Buyer, including on Discharging Energy prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees) and on Charging Energy prior to delivery to the Delivery Point. Seller shall be solely responsible for all taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Contract Term, but expressly excluding any taxes, charges or fees related to Greenhouse Gases imposed on Charging Energy or Discharging Energy. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy or other Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, *however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Energy, capacity, and Ancillary Services delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy, capacity, and Ancillary Services.

5.3 **Ownership**. Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with the Facility and to any and all tax benefits associated with the Facility, including any such tax credits or tax benefits under the Internal Revenue Code of 1986, as amended. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended. The Parties will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of the Product from the Seller or that this agreement is anything other than a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

(a) Seller shall provide to Buyer no later than ninety (90) days prior to the Commercial Operation Date for the period from the Commercial Operation Date through the end of the then-current calendar year, and no later than September 1 of each calendar year thereafter

for the following calendar year, a schedule of all planned outages or derates of the Facility for maintenance purposes ("**Scheduled Maintenance")**. Seller shall not conduct Scheduled Maintenance between June 1 and October 31 of each year. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to adjusting the timing of Scheduled Maintenance. Seller may modify its schedule of Scheduled Maintenance upon reasonable advance notice to Buyer, subject to reasonable requests of Buyer and consistent with Section 4.4 and this Section 6.1.

(b) Seller shall use commercially reasonable efforts to perform during periods of Scheduled Maintenance all maintenance that will reduce the Facility's output or availability. Seller shall arrange for any necessary non-emergency maintenance that is not Scheduled Maintenance and that reduces the Available Storage Capacity of the Facility by more than ten percent (10%) to occur only between November 1 and May 31 of each year, unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties or in accordance with Prudent Operating Practice and cannot be scheduled outside the months of June through October, or (iii) the Parties agree otherwise in writing.

(c) Seller shall use commercially reasonable efforts to schedule all maintenance outages, including those associated with Scheduled Maintenance (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer, provided that Seller shall not be required to consolidate preventative maintenance activities into a single month where such consolidation is inconsistent with vendor-recommended maintenance schedules.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit C Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Permits and Approvals**. As between Buyer and Seller, Seller shall obtain any required permits and approvals in connection with the development, construction, and operation of the Facility, including without limitation, environmental clearance under the California Environmental Quality Act or other environmental law, from the local jurisdiction where the Facility will be constructed.

6.4 **Energy to Serve Station Power**. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (a) Seller is responsible for providing all Energy to serve Station Power (including paying the cost of any Energy used to serve Station Power and the cost of energy provided by third parties used to serve Station Power) that is charged as retail power pursuant to the retail service schedule for the Facility; [redacted]

[redacted] and (d) Buyer shall, and shall cause its Scheduling Coordinator to, cooperate reasonably with Seller and the retail service provider to provide information necessary for the Facility to enable the application of the netting provisions under the retail service schedule for the Facility to the extent permissible in accordance with the CAISO Tariff and the retail service schedule for the Facility. The use of Energy to serve Station Power is also subject to the following requirements and restrictions:

(i) Seller shall not bill Buyer and Buyer will not pay Seller for any Energy that serves Station Power;

(ii) Seller shall be responsible for the metering and estimation of Energy used to serve Station Power to ensure that records and invoices to Buyer are accurate and do not improperly bill Buyer for Energy that serves Station Power and to enable Buyer to invoice Seller for Reimbursable Station Power Costs;

(iii) [redacted]

(iv) Seller may dispatch the Facility to use Stored Energy or Energy discharged from the Facility to serve Station Power only during periods when such service is permissible in accordance with the CAISO Tariff and the retail service schedule for the Facility. Seller shall ensure that any Seller-directed dispatch to use Stored Energy or Energy discharged from the Facility to serve Station Power complies with and does not interfere with or impair Buyer's or the CAISO's dispatch of or schedule for the Facility, and if Seller fails to comply with such requirements, then, without prejudice to and without duplication of Buyer's other rights and remedies hereunder, Seller shall reimburse Buyer for (A) any charges, costs, and penalties imposed by the CAISO for the Facility's failure to comply with dispatch instructions, the CAISO schedule, or any CAISO requirements (including any Imbalance Energy costs); and (B) any loss of revenue if the CAISO adjusts dispatch instructions due to Seller-directed dispatch of the Facility to use Stored Energy or Energy discharged from the Facility to serve Station Power, in each case only to the extent imposed or incurred as a direct result of Seller's dispatch of the Facility to use Stored Energy or Energy discharged from the Facility to serve Station Power;

(v) Any Seller-directed dispatch of the Facility to use Energy discharged from the Facility or Stored Energy for Station Power shall not (A) reduce Seller's obligations to achieve the Guaranteed Storage Availability and Guaranteed Round-Trip Efficiency,

or (B) count toward limits (including daily and or annual cycle limits) specified in the Operating Restrictions; and

(vi) Each Party shall provide to the other Party Notices as follows: (A) Seller shall provide Buyer notice of any change in the retail energy provider's tariff or retail service schedule applicable to Station Power for the Facility, and (B) each Party shall provide the other Party, upon such other Party's request, all records and data available to the Party receiving the request (and in the case of Buyer, its Scheduling Coordinator) related to measurement of Station Power, including detailed meter, charging, discharging, and state of charge data, that may be necessary or useful for verification that service of Station Power occurred in compliance with this Section 6.4, and to calculate and verify the accuracy of Reimbursable Station Power Costs.

ARTICLE 7
METERING

7.1 **Metering**. The Facility shall have its own CAISO Resource ID. Seller shall measure the Charging Energy, Discharging Energy and grid-supplied Station Power using the Storage Facility Meter and CAISO approved methodologies. The Storage Facility Meter shall be installed on the low side or the high side of the Seller's transformer and maintained at Seller's cost. Metering will be consistent with the Metering Diagram set forth in Exhibit P. The meter(s) shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter at the Facility.

7.2 **Meter Verification**. If Buyer or Seller has reason to believe there may be a meter malfunction, Seller shall test the meter. Annually, upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall deliver an invoice to Buyer for Product no later than ten (10) days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Charging Energy, Discharging Energy and Reimbursable Station Power for any

Settlement Period during the preceding month, (b) the amount of Product and Replacement RA, if any, delivered to Buyer during the preceding month, and the Storage Rate applicable to such Product and Replacement RA, and (c) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount. Invoices shall be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Either Party, upon fifteen (15) days written Notice to the other Party, shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors**. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due. Except for adjustments required due to a correction of data by the CAISO, any adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within twelve (12) months after the invoice is rendered or subsequently adjusted.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement, or adjust any invoice for any

arithmetic or computational error, within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a party other than the Party seeking the adjustment and such party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security**. To secure Seller's obligations under this Agreement, including the obligations of Seller to pay liquidated damages to Buyer as provided in this Agreement, Seller shall deliver Development Security to Buyer within seven (7) Business Days after the Effective Date. Buyer will have the right to draw upon the Development Security if Seller fails to pay liquidated damages owed to Buyer pursuant to Exhibit B to this Agreement, or if Seller fails to pay a Damage Payment or Termination Payment owed to Buyer pursuant to Section 11.2. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect and Seller shall replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement within five (5) Business Days after such draw, other than to satisfy a Termination Payment. Seller shall maintain the Performance Security in full force and effect until the date on which the following have occurred ("**Performance Security End Date**"): (A) the Delivery Term has expired or terminated early; and

(B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of the Performance Security End Date, Buyer shall promptly return to Seller the unused portion of the Performance Security. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace or change the form of Performance Security to another form of Performance Security from time to time upon reasonable prior written notice to Buyer.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 **Scope of Seller's Business**. Seller shall not own, operate or manage any equipment, facility, property or other asset, other than those relating to the Facility, Shared Facilities, or Other Facilities, or engage in any business or activity other than those relating to the development, financing, construction, ownership, operation or maintenance of the Facility, Shared Facilities, or Other Facilities.

ARTICLE 9
NOTICES

9.1 **Addresses for the Delivery of Notices**. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means), at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic [redacted]; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Storage Rate unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product at a lower price or Seller's ability to sell Product at a higher price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) variations in weather, including wind, rain and insolation, within one in fifty (1 in 50) year occurrence; or (ix) failure to complete the interconnection facilities or network upgrades required to connect the Facility and to deliver Product to the Delivery Point by the Guaranteed Commercial Operation Date except to the extent such inability is caused by a Force Majeure Event; or (x) Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs**. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. Buyer shall not be obligated to pay for any Product that Seller was not able to deliver as a result of a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice**. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, *however*, that a Party's failure to give timely Notice shall not affect

such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 14.1, 14.2 or 14.3, as applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Product that was not produced by the Facility, except with respect to Replacement RA;

(ii) the failure by Seller to achieve the Construction Start Date within one hundred twenty (120) days after the Guaranteed Construction Start Date, or the failure by Seller to achieve Commercial Operation within [redacted] days after the Guaranteed Commercial Operation Date;

(iii) if, in the first Contract Year during the Delivery Term, the average Monthly Storage Availability multiplied by the Storage Capacity is not at least fifty percent (50%) multiplied by the Installed Storage Capacity, or for any Contract Year thereafter, the average Monthly Storage Availability multiplied by the Storage Capacity is not at least seventy percent (70%) by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such applicable threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days or three hundred sixty-five (365) days if the Main Power Transformer must be replaced ("**Cure Plan**") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) if, for any two (2) consecutive Contract Years, the annual average Round-Trip Efficiency is not at least [redacted];

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment, if such failure is not remedied within five (5) Business Days after Notice thereof;

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than [redacted] days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages the Damage Payment or the Termination Payment in accordance with Section 11.3;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and/or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Damage Payment; Termination Payment**. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the

Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the amount of the Development Security plus, if the Development Security is posted as cash, amount and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal (A) the sum of (I) all actual, documented and verifiable costs and [redacted] incurred or paid by Seller or its Affiliates, from the Effective Date through the Early Termination Date, directly in connection with the Facility [redacted] less (B) the fair market value (determined in a commercially reasonable manner

by third-party independent evaluator mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator mutually agreed by two independent evaluators, one selected by each of the Parties), but at Buyer's sole cost), net of all Facility-related liabilities and obligations (without duplication of any of the liabilities and obligations set forth in Section 11.3(a)(ii)), of (I) all Seller's assets if sold individually, or (II) the entire Facility, whichever is greater as of the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. Fair market value will be based on the value of Seller's assets or the entire Facility as existing on the Early Termination Date and not on the value thereof at a later stage of development or construction of the Facility or at completion of the Facility. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment or Damage Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment or Damage Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 16.

11.6 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date**. If the Agreement is terminated prior to the Commercial Operation Date for any reason other than a Buyer Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of [redacted] following the early termination date, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price, except that, if the cause of the termination was a Force Majeure Event that lasted longer than the maximum allowable Development Cure Period delays, Seller's offer may include a higher price if it is accompanied by an explanation reasonably demonstrating that the higher price is attributable to the increase in expected costs arising from the Force Majeure Event) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including Seller's interest in the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **Rights And Remedies Are Cumulative**. Except where liquidated damages or another remedy are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 **Mitigation**. Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

[redacted]

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY, THIRD-PARTY CLAIM SUBJECT TO INDEMNIFICATION UNDER AN INDEMNITY PROVISION, OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages**. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE DAMAGE PAYMENT UNDER SECTION 11.2 AND THE TERMINATION PAYMENT UNDER SECTION 11.3, AND AS PROVIDED IN SECTION 3.6, SECTION 4.10, EXHIBIT B, EXHIBIT M, AND EXHIBIT Q, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS, AND (UNLESS EXPRESSLY STATED TO THE CONTRARY) AN EXCLUSIVE REMEDY. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE IN THIS AGREEMENT, INCLUDING PARAGRAPH 19.3, THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties**. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law

presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Neither Seller nor its Affiliates has been notified by any existing or anticipated supplier or service provider, that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused or are reasonably likely to cause a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Construction Start Date to be later than the Guaranteed Construction Start Date or the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

(f) The Facility is located in the State of California.

13.2 **Buyer's Representations and Warranties**. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of

indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants**. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

13.4 **Prohibition Against Forced Labor**. Seller represents and warrants that it has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily ("**Forced Labor**"). Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor. Seller shall certify that it will not utilize such equipment or resources in connection with the construction, operation or maintenance of the Facility.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment of this Agreement or delegation of duties under this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 **Permitted Assignment; Change of Control of Seller**. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; or (b) subject to Section 15.1, a Lender as collateral. Any Change of Control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Article 14 and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, that a Change of Control of Seller shall not require Buyer's consent and will not be subject to Section 14.1 or Section 14.2 if the assignee or transferee is a Qualified Transferee.

14.3 **Permitted Assignment; Change of Control of Buyer**. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided*, that in each of the foregoing situations, the assignee (a) has a Credit Rating of Baa2 or higher by Moody's or BBB or higher by S&P, and (b) is a community choice aggregator or publicly-owned electric utility with retail customers located in the state of California; *provided*, *further*, that in each such case, no fewer than fifteen (15) Business Days before such assignment Buyer (x) notifies Seller of such assignment and (y) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b). Any assignment by Buyer, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

ARTICLE 15
LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest**. Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the other Party in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give

the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

15.2 **Rights of Lender**. If a Party grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2 and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that the non-granting Party recognizes the Lender's security interest and such other provisions as may be reasonably requested by the granting Party or any such Lender; *provided*, however, that all costs and expenses (including reasonable attorney's fees) incurred by the non-granting Party in connection therewith shall be borne by the granting Party, and that the non-granting Party shall have no obligation to modify this Agreement or to reduce its benefits or increase its risks or burdens under this Agreement.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; *provided* that the non-granting Party shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 **Cure Rights of Lender**. The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Sections 11.1 or 11.2 hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder. The cure rights of Lender may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party pursuant to Section 15.2(b).

ARTICLE 16
DISPUTE RESOLUTION

16.1 **Governing Law.** This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the

state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

16.2 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

16.3 **Attorneys' Fees**. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

16.4 **Venue**. The Parties agree that any litigation arising with respect to this Agreement is to be venued in the Superior Court for the county of San Mateo, California.

ARTICLE 17
INDEMNIFICATION

17.1 **Indemnification**.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the violation of Law or the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 17.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

17.2 **Claims**. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided*, *however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, then Indemnified Party may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; provided, if counsel is employed due to a conflict of interest or because the Indemnifying Party does not assume control

of the defense, the Indemnifying Party will bear the expense of this counsel, unless a liability insurer is willing to pay such costs.If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 18
INSURANCE

18.1 **Insurance**.

(a) General. Seller shall comply at all times during the Contract Term with the requirements of Exhibit J.

(b) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage, in each case, in amounts that are customary for contractors providing work of the type and scope to be provided and are consistent with Prudent Operating Practices. All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(b).

(c) Evidence of Insurance. At least ten (10) days prior to the Construction Start Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any cancellation or termination of coverage. Seller agrees to provide Buyer at least thirty (30) days prior Notice of any material modification of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(d) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance

been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 19
CONFIDENTIAL INFORMATION

19.1 **Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written, and whether delivered by Seller to Buyer or by Buyer to Seller: (a) proposals and negotiations of the Parties in the negotiation of this Agreement; (b) the terms and conditions of this Agreement; and (c) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" or words of similar import before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

19.2 **Duty to Maintain Confidentiality**. The Party receiving Confidential Information shall treat it as confidential, and shall adopt reasonable information security measures to maintain its confidentiality, employing the higher of (a) the standard of care that the receiving Party uses to preserve its own confidential information, or (b) a standard of care reasonably tailored to prevent unauthorized use or disclosure of such Confidential Information. Confidential Information may be disclosed by the recipient if and to the extent such disclosure is required (a) by Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The Party that originally discloses Confidential Information may use such information for its own purposes, and may publicly disclose such information at its own discretion. **Notwithstanding the foregoing, Seller acknowledges that Buyer is required to make portions of this Agreement available to the public in connection with the process of seeking approval from its board of directors for execution of this Agreement. Buyer may, in its discretion, redact certain terms of this Agreement as part of any such public disclosure, and will use reasonable efforts to consult with Seller prior to any such public disclosure.** Seller further acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Upon request or demand from any third person not a Party to this Agreement for production, inspection and/or copying of this Agreement or other Confidential Information provided by Seller to Buyer, Buyer shall, to the extent permissible, notify Seller in writing in advance of any disclosure that the request or demand has been made; provided that, upon the advice of its counsel that disclosure is required, Buyer may disclose this Agreement or any other requested Confidential Information, whether or not advance written notice to Seller has been provided. Seller shall be solely responsible for taking whatever steps it deems necessary to protect Confidential Information that is the subject of any Public Records Act request submitted by a third person to Buyer.

19.3 **Irreparable Injury; Remedies**. Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at Law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

19.4 **Disclosure to Lender**. Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

19.5 **Disclosure to Credit Rating Agency.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by either Party to any nationally recognized credit rating agency (e.g., Moody's Investors Service, Standard & Poor's, or Fitch Ratings) in connection with the issuance of a credit rating for that Party or its Affiliates, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information.

19.6 **Public Statements**. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release.

ARTICLE 20
MISCELLANEOUS

20.1 **Entire Agreement; Integration; Exhibits**. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

20.2 **Amendments**. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

20.3 **Time is of the Essence.** The Parties agree that time is of the essence with respect each Party's performance of its obligations under the Agreement.

20.4 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.5 **No Agency, Partnership, Joint Venture or Lease**. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

20.6 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.**Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

20.8 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

20.9 **Facsimile or Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

20.10 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

20.11 **No Recourse to Members of Buyer**. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights

and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

20.12 **Change in Electric Market Design**. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 16. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) this Agreement shall remain in full force and effect, subject to any necessary changes, if any, agreed to by the Parties or determined through dispute resolution.

EXHIBIT A

DESCRIPTION OF THE FACILITY

Facility Name: Lockhart Energy Storage System

Site Name: Lockhart

Site Description: [redacted]

Site Address: [redacted]

GPS Coordinates: [redacted]

Site Map:

[redacted]

[redacted]

APNs: [redacted]

County: San Bernardino County

CEQA Lead Agency: San Bernardino County

Guaranteed Storage Capacity: See the Cover Sheet

Maximum Stored Energy Level at COD (MWh): 180 MWh

Maximum Charging Capacity at COD: 45 MW

Maximum Discharging Capacity at COD: 45 MW

Guaranteed Round-Trip Efficiency: See the Cover Sheet

Ramp Rate: See Exhibit O

Storage Technology: Lithium-ion battery

P-node/Delivery Point: [redacted]

Point of Interconnection: [redacted]

Description of Interconnection Facilities and Metering: [redacted]

CAISO Queue Number: [redacted]

One-Line Diagram: See Exhibit P

Additional Information: N/A

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

a. Seller shall cause construction to begin on the Facility by the Guaranteed Construction Start Date. Seller shall demonstrate the beginning of construction through execution of Seller's engineering, procurement and construction contract, Seller's issuance of a notice to proceed under such contract, mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the Site ("**Construction Start**"). On the date of the beginning of construction (the "**Construction Start Date**"), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit H hereto.

b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until the earlier of one hundred twenty (120) days after the Guaranteed Construction Start Date, or the date on which Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 3(b) of this Exhibit B. The Parties agree that Buyer's receipt of Daily Delay Damages shall be Buyer's sole and exclusive remedy for the first one hundred twenty (120) days of the delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(i) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and (ii) Seller has provided Notice to Buyer that Commercial Operation has been achieved. The "**Commercial Operation Date**" shall be the later of (x) April 1, 2024, or (y) the date on which Commercial Operation is achieved.

a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after the Commercial Operation Date.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Buyer shall retain Daily Delay Damages, as applicable, and Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the earlier of [redacted] days after the Guaranteed Commercial Operation Date, or the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer's retention of Daily Delay Damages and receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for the first [redacted] days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default under Section 11.1(b)(i) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Timely Achieve Construction Start or Commercial Operation**. If the Facility has not achieved Construction Start within one hundred twenty (120) days after the Guaranteed Construction Start Date, or Commercial Operation within [redacted] days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement pursuant to Sections 11.1(b)(i) and 11.2(a), which termination shall become effective as provided in Section 11.2(a).

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of each of the following delays:

a. a Force Majeure Event occurs; or

b. [redacted]

c. Buyer has not made all necessary arrangements to deliver Charging Energy to the Delivery Point, receive the Discharging Energy at the Delivery Point, and become, or cause its designee to become, recognized by CAISO as the Scheduling Coordinator for the Facility by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(c) above) shall not exceed [redacted] days, for any reason, and, without limiting the provisions of Section 10.3, no extension shall be given to the extent that (i) the delay was the result

of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines; (ii) Seller failed to provide prompt written notice to Buyer of a delay due to a Force Majeure Event, but in no case more than thirty (30) days after Seller became aware of an actual delay (not including Seller's receipt of generic notices of potential delays due to a Force Majeure Event) affecting the Facility, except that in the case of a delay occurring within sixty (60) days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within seven (7) Business Days of Seller becoming aware of such delay; or (iii) Seller failed, upon written request from Buyer, to provide documentation demonstrating to Buyer's reasonable satisfaction that the delay was a result of a Force Majeure Event and did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Storage Capacity**. If, at Commercial Operation, the Installed Storage Capacity is at least ninety-five percent (95%) of the Guaranteed Storage Capacity but less than the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional storage capacity such that the Installed Storage Capacity is increased, but not to exceed the Guaranteed Storage Capacity. If Seller installs additional storage capacity pursuant to the immediately preceding sentence, Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit G-2 hereto specifying the new Installed Storage Capacity. In the event that the Installed Storage Capacity is still less than the Guaranteed Storage Capacity as of the date that is (90) days after the Commercial Operation Date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity, and the Guaranteed Storage Capacity and other applicable portions of the Agreement shall be reduced based on the ratio of the Installed Storage Capacity as of such date to the original Guaranteed Storage Capacity. Buyer's receipt of Capacity Damages shall be Buyer's sole and exclusive remedy for Seller's failure to achieve an Installed Storage Capacity of at least the Guaranteed Storage Capacity after declaring Commercial Operation.

6. **Buyer's Right to Draw on Development Security**. If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof, and Seller shall replenish the Development Security to its full amount within five (5) Business Days after such draw.

7. **Seller Early Termination Right.** Notwithstanding any other provision of this Agreement, Seller shall have the right, but not the obligation, in its sole discretion to terminate this Agreement at any time prior to the Commercial Operation Date upon providing Notice of termination to Buyer. Upon any such termination, Seller will owe Buyer liquidated damages in an amount equal to the Damage Payment. Buyer's receipt of the Damage Payment and the right of first offer pursuant to Section 11.6 will be Buyer's sole and exclusive remedy in connection with Seller's termination of the Agreement pursuant to this Section 7 of Exhibit B.

EXHIBIT C

EMERGENCY CONTACT INFORMATION

BUYER:

Peninsula Clean Energy Authority
2075 Woodside Road
Redwood City, CA 94061
Attn: Director of Power Resources

Phone No.: 650-260-0005
Email: contracts@peninsulacleanenergy.com

SELLER: Seller to provide after start of operations

Attn:

Phone:

[redacted]

[redacted]

Exhibit D - 1

EXHIBIT E

PROGRESS REPORTING FORM

Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a written Progress Report in the form specified below.

Each Progress Report must include the following items:

1. Executive summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any planned changes to the Facility or the Site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter.

8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.

9. List of issues that could potentially affect Seller's Milestones.

10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.

11. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

13. Any other documentation reasonably requested by Buyer.

EXHIBIT F

RESERVED

EXHIBIT G-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____[*Licensed Professional Engineer*] ("**Engineer**") to Peninsula Clean Energy Authority ("**Buyer**") in accordance with the terms of that certain Energy Storage and Services Agreement dated _____ ("**Agreement**") by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Engineer hereby certifies and represents to Buyer the following:

(1) Seller has installed and commissioned storage equipment with a capacity of at least ninety-five percent (95%) of the Guaranteed Storage Capacity.

(2) The Facility is capable of receiving Charging Energy and delivering Discharging Energy to the Delivery Point and commissioning of equipment at the Facility has been completed in accordance with the manufacturer's specifications.

(3) Authorization to parallel the Facility was obtained by the Participating Transmission Owner, [Name of Participating Transmission Owner as appropriate] on___[DATE]____

(4) The Participating Transmission Owner or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _____[DATE]_____.

(5) The CAISO has provided notification supporting the Facility's Commercial Operation, inclusion in the Full Network Model and authorization to provide Ancillary Services, all in accordance with the CAISO tariff on _____[DATE]_____.

EXECUTED by **[**licensed professional engineer**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:_____

Its:_____

Date:_____

EXHIBIT G-2

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Storage Capacity is delivered by [Licensed Professional Engineer] ("**Engineer**") to PENINSULA CLEAN ENERGY AUTHORITY ("**Buyer**") in accordance with the terms of that certain Energy Storage and Services Agreement dated _____ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

The initial Facility performance test under Seller's engineering, procurement and construction contract or primary energy storage system supply agreement for the Facility demonstrated peak Facility electrical output of __MW AC at the Delivery Point ("**Installed Storage Capacity**").

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:_____

Its:_____

Date:_____

EXHIBIT H

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification ("**Certification**") of the Construction Start Date is delivered by [SELLER ENTITY] ("**Seller**") to PENINSULA CLEAN ENERGY AUTHORITY ("**Buyer**") in accordance with the terms of that certain Energy Storage and Services Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. the engineering, procurement and construction contract related to the Facility was executed on _____;

2. the limited notice to proceed with the construction of the Facility was issued on _____ (attached);

3. the Construction Start Date has occurred;

4. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

   _____
   (such description shall amend the description of the Site in Exhibit A).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of _____.

[SELLER ENTITY]

By:

Its:

Date:_____

EXHIBIT I

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$**[XXXXXXX]**
Expiry Date:

Beneficiary:

Peninsula Clean Energy Authority

[Address]

Ladies and Gentlemen:

On behalf of **[XXXXXXX]** ("Applicant"), we, **[insert bank name and address]** ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. **[XXXXXXX]** (the "Letter of Credit") in favor of Peninsula Clean Energy Authority, Address_____, for an amount not to exceed the aggregate sum of U.S. $**[XXXXXXX]** (United States Dollars **[XXXXXXX]** and 00/100), pursuant to that certain **[Agreement]** dated as of _____ (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall have an initial expiry date of _____ __, 201_ subject to the automatic extension provisions herein.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. **[XXXXXXX]** accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer in person, by courier or by fax at **[insert bank address]**. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

The document(s) required may also be presented by fax at facsimile no. (xxx) xxx-xxx on or before the expiry date (as may be extended below) on this Letter of Credit in accordance with the terms and conditions of this Letter of Credit. No mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents without the need of originally signed documents.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each

anniversary for such date, unless at least ninety (90) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to permit this Letter of Credit to be so extended, in which case it will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at **[insert bank address information]**, referring specifically to Issuer's Letter of Credit No. **[XXXXXXX]**. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at **[XXX-XXX-XXXX]** and have this Letter of Credit available.

[Bank Name]

_____

[Insert officer name]
[Insert officer title]

DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Peninsula Clean Energy Authority, Address_____ as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. **[XXXXXXX]** (the "Letter of Credit") issued by **[insert bank name]** (the "Bank") by order of **[XXXXXXX]** (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of **[XXXXXXX]** (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____.

   or

3. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____, which equals the full available amount under the Letter of Credit, because the Bank has provided notice of its intent to not extend the expiry date of the Letter of Credit and Applicant failed to provide acceptable replacement security to Beneficiary at least thirty (30) days prior to the expiry date of the Letter of Credit.

4. The undersigned is a duly authorized representative of Peninsula Clean Energy and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Peninsula Clean Energy Authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Peninsula Clean Energy Authority

_____
Name and Title of Authorized Representative

Date_____

EXHIBIT J

INSURANCE

Liability Insurance

To the fullest extent allowable by law, Seller shall purchase and maintain, or cause to be obtained and maintained, such insurance as will protect it from the claims set forth below which may arise out of or result from Seller's operations under this Agreement whether such operations be by Seller itself or by anyone directly or indirectly employed by Seller for scope related to Seller's operations under this Agreement.

General Conditions

Seller shall maintain, or cause to be maintained, completed operations liability insurance for the period from the Commercial Operation Date through the end of the Contract Term plus the period of time Seller may be held legally liable for.

Seller shall maintain policies of insurance in full force and effect, at all times during the performance of the Agreement, plus any statute of repose or statute of limitations applicable to the jurisdiction where any work related to the Facility is performed by Seller's contractors or subcontractors, excluding Seller's equipment suppliers.

All insurance companies shall have a Best's rating of A-VII or better.

In addition, Seller shall provide Buyer with 45 days' notice in case of cancellation or non- renewal, except 10 days for non-payment of premium.

Certificates of Insurance Acord Form 25 and <u>all required Endorsements</u> shall be filed with Buyer prior to the Construction Start Date.

To the extent Buyer is named in a suit for third-party damages and coverage is triggered hereunder, upon request by the Buyer, Seller shall provide redacted portions of any or all policies that are pertinent to the claim.

Acceptance of the certificates or endorsements by the Buyer shall not constitute a waiver of Seller's obligations hereunder.

If Seller fails to secure and/or pay the premiums for any of the policies of insurance required herein, or fails to maintain such insurance, Buyer may, in addition to any other rights it may have under this Agreement or at law or in equity, terminate this Agreement or secure such policies or policies of insurance for the account of Seller and charge Seller for the premiums paid therefore, or withhold the amount thereof from sums otherwise due from Buyer to Seller. Neither the Buyer's rights to secure such policy or policies nor the securing thereof by Buyer shall constitute an undertaking by Buyer on behalf of or for the benefit of Seller or others to determine or warrant that such policies are in effect.

Seller shall be fully and financially responsible for all deductibles or self-insured retentions.

Coverage Forms & Limits

Seller's Commercial General Liability insurance shall be written on an industry standard Commercial General Liability Occurrence from (CG 00 01, 12/07) or its equivalent and shall include but not be limited to products/completed operations; premises and operations; blanket contractual; advertising/personal injury.

Coverage shall be on an occurrence form with policy limits of not less than:

- $1,000,000 Each Occurrence Bodily Injury & Property Damage
- $1,000,000 Personal & Advertising Injury
- $2,000,000 General Aggregate to apply on a Per Project basis
- $2,000,000 Products/Completed Operations Aggregate

Business Auto Liability – Coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) form CA 00 01, written on an occurrence basis to apply to "any auto" or at a minimum "all owned, hired and non-owned autos", with policy limits of not less than $1,000,000 per accident for bodily injury and property damage.

If applicable, Broadened Pollution for Covered Autos shall apply. This requirement may also be satisfied by providing proof of separate contractor's Pollution Liability that includes coverage for transportation exposures.

Workers' Compensation and (b) employers' liability – Seller shall obtain and maintain, or cause to be obtained and maintained, coverage for industrial injury to their employees in strict accordance with the provisions of the State or States in which Facility work is performed.

Such insurance shall be in an amount of not less than:

- Workers Compensation: Statutory
- Employers Liability
    - $1,000,000 Bodily Injury by Accident – Each Accident
    - $1,000,000 Bodily Injury by Disease – Total Limit
    - $1,000,000 Bodily Injury by Disease – Each Employee

Commercial Umbrella or Excess Liability Insurance over Seller's primary Commercial General Liability, Business Auto Liability and Employers Liability. All coverage terms required under the Commercial General Liability, Business Auto Liability and Employers Liability above must be included on the Umbrella or Excess Liability Insurance.

Coverage shall be written on an occurrence form with policy limits not less than:

- $5,000,000 Each Occurrence
- $5,000,000 Personal & Advertising Injury
- $5,000,000 Aggregate (where applicable, following the terms of the underlying)

Professional Liability and/or Errors & Omissions – [redacted]

[redacted]

The policy shall be effective from the date of commencement of construction in connection with the fulfillment of all contract obligations of contractor. The retroactive date in the current and future policies shall be prior to the commencement of the services. Coverage shall be maintained for a period not less than 48 months following the substantial completion; or an extended reporting period of 48 months following completion of the work shall be purchased.

Additional Insured / Primary-Noncontributory / Waiver of Subrogation Requirements To the fullest extent of coverage allowed under applicable law, Buyer shall be included as additional insured on a primary and non-contributory basis for all required lines of coverage except Statutory Workers Compensation, arising out of all operations performed by or for the Seller under this Agreement. Buyer shall accept General Liability Additional Insured forms CG 2010 04/13, CG 2037 04/13or their equivalent.

Seller's insurance shall be Primary as respects to Buyer, and any other insurance maintained by Buyer shall be excess and not contributing insurance with Seller's insurance until such time as all limits available under the Seller's insurance policies have been exhausted.

The additional insured status shall remain in full force and effect for the Contract Term plus the applicable statute of repose, or the amount of time you are legally liable, whichever is longer.

Waiver of Subrogation – Seller shall provide a Waiver of Subrogation Endorsement naming Buyer for all lines of coverage.

Additional Requirements

Property Insurance

Seller shall procure and maintain, at the Seller's own expense, Builder's Risk, and property insurance, including for any property stored off the Site or in transit. Seller and Seller's insurance carrier(s) hereby waive all rights of subrogation against Buyer for damage including loss of use.

Buyer neither represents nor assumes responsibility for the adequacy of the Builders Risk Insurance to protect the interests of the Seller. It shall be the obligation of the Seller to purchase and maintain any supplementary property insurance that it deems necessary to protect its interest in the Work, including without limitation off site stored materials and materials in transit.

EXHIBIT K

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [ ], a [ ] ("**Seller**") to Peninsula Clean Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage and Services Agreement dated [_____] ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.6(b) of the Agreement, Seller hereby provides the below Replacement RA product information (to be repeated for each unit if more than one):

Name	
Location	
CAISO Resource ID	
Unit SCID	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Deliverability Period	
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Resource Category (MCC Bucket e.g., 1, 2, 3, or 4)	
Flexible Capacity Category (e.g., 1, 2, 3, or N/A)	

Month	**Unit CAISO NQC (MW)**	**Unit CAISO EFC (MW)**	**Unit Contract Quantity (MW)**	**Unit EFC Contract Quantity (MW)**
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

Exhibit K - 2

[SELLER]

By:_____

Its:_____

Date:_____

Whereas, the following definitions apply to the terms in the above Replacement RA product information:

"**CPUC RA Filing Guide**" means the Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings published annually by the CPUC.

"**Deliverability Period**" means the period in which the unit has rights to deliver energy to the CAISO Grid.

"**Flexible Capacity Category**" means the category of Effective Flexible Capacity, as described in the CPUC RA Filing Guide, applicable to the unit.

"**LCR Area (if any)**" means the Local Capacity Requirement area, as used in the CPUC RA Filing Guide, applicable to the unit, if any.

"**Prorated Percentage of Unit Factor**" means the percentage of the Unit CAISO NQC that is designated as Unit Contract Quantity.

"**Prorated Percentage of Unit Flexible Factor**" means the percentage of Unit CAISO EFC that is designated as Unit EFC Contract Quantity.

"**Resource Category**" means the Maximum Cumulative Capacity category, as described in the CPUC RA Filing Guide, applicable to the unit.

"**Resource Type**" means the type of storage resource.

"**Run Hour Restrictions**" means any restrictions on the ability of the unit to run during any hours of the day.

"**Unit CAISO EFC**" means the unit's Effective Flexible Capacity, as described in the CPUC RA Filing Guide, as determined by CPUC and CAISO.

"**Unit CAISO NQC**" means the NQC (as defined in the CAISO Tariff) for the unit, as determined by CPUC and CAISO.

"**Unit Contract Quantity**" means the amount of Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Guaranteed RA Amount.

"**Unit EFC Contract Quantity**" means the amount of Flexible Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Guaranteed RA Amount.

"**Unit SCID**" means the unit's "Scheduling Coordinator ID Code", as defined in the CAISO Tariff.

EXHIBIT L-1

Monthly Expected Available Storage Capacity

The following table is provided for informational purposes only.

Please adjust the table for the appropriate number of days in the month for each month of the year.

Monthly Expected Available Storage Capacity (MW) per Hour - [Insert Month]

	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11 00	12 00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24 00
Day 1																									
Day 2																									
Day 3																									
Day 4																									
Day 5																									
[insert additional rows for each day of the month]																									
Day 26																									
Day 27																									
Day 28																									
Day 29*																									
Day 30*																									
Day 31*																									

EXHIBIT L-2

Monthly Expected Available Storage Capability

The following table is provided for informational purposes only.

Please adjust the table for the appropriate number of days in the month for each month of the year.

Monthly Expected Available Storage Capability (MWh) per Hour – [Insert Month]

	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																									
Day 2																									
Day 3																									
Day 4																									
Day 5																									
[insert additional rows for each day of the month]																									
Day 26																									
Day 27																									
Day 28																									
Day 29*																									
Day 30*																									
Day 31*																									

EXHIBIT M

MONTHLY STORAGE AVAILABILITY

1. <u>Monthly Storage Availability</u>.

(a) For each monthly period after the Commercial Operation Date, Seller shall calculate the "**<u>Monthly Storage Availability</u>**" using the formula set forth below:

$$\boldsymbol{Monthly\ Storage\ Availability}\ (\%) = 1 - \frac{\boldsymbol{Monthly\ Unavailable\ Calculation\ Intervals}}{\boldsymbol{Total\ Calculation\ Intervals}}$$

where:

"<u>CALCULATION INTERVAL</u>" or "<u>C.I.</u>" = each successive five-minute interval, but excluding all such intervals which are Scheduled Maintenance, not to exceed 50 hours in each Contract Year

"<u>MONTHLY UNAVAILABLE CALCULATION INTERVALS</u>" = the sum of all Unavailable Calculation Intervals for the applicable month

"<u>UNAVAILABLE CALCULATION INTERVAL</u>" = For each Calculation Interval, the Unavailable Calculation Interval is defined using the formula set forth below. Except as otherwise expressly provided in this Agreement (including <u>Section 4.6(f)</u>), the calculations of Available Storage Capacity and Available Storage Capability for purposes of determining the Unavailable Calculation Intervals shall be based solely on the availability of the Facility to receive Charging Energy from or deliver Discharging Energy to the Delivery Point, as applicable [redacted]

$$Unavailability\ Calculation\ Interval = 1 - \left[\begin{array}{c} the\ lesser\ of: \left(\frac{A}{Storage\ Capacity}\right) or \\ \left(\frac{Available\ Storage\ Capability}{Storage\ Capacity\ X\ 4\ hrs}\right) \end{array} \right]$$

where:

"A" is the "**AVAILABLE STORAGE CAPACITY**", which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, from all system inverters expected to receive Charging Energy from or deliver Discharging Energy to the Delivery Point, in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer's guidelines), provided that the Available Storage Capacity shall be the lower of (i) such amounts reported by Seller's real-time EMS data feed to Buyer for the Facility for such Calculation Interval, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.4), and further provided that "A" shall never exceed the Storage Capacity.

"**AVAILABLE STORAGE CAPABILITY**" = the sum of the following (taking into account the SOC at the time of calculation and the Operating Restrictions):

i. The battery capability (in MWh) available to receive Charging Energy from the Delivery Point in the applicable Calculation Interval

ii. The battery capability (in MWh) available to deliver Discharging Energy to the Delivery Point in the applicable Calculation Interval

In calculating Available Storage Capability, the "battery capability available to receive Charging Energy" and "battery capability available to receive Discharging Energy" are calculated as the product of (1) the count of available system cells in such Calculation Interval, multiplied by (2) the capability, in watt-hours, expected from each such system cell (based on normal operating conditions pursuant to the manufacturer's guidelines), that are able (considering the conditions of the Facility in total) to receive Charging Energy from or deliver Discharging Energy to the Delivery Point, provided that the Available Storage Capability shall be the lower of (i) such amounts reported by Seller's real-time EMS data feed to Buyer for the Facility for such Calculation Interval, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.4), and further provided that Storage Capability shall never exceed the Storage Capacity x four (4) hours.

"**TOTAL CALCULATION INTERVALS**" = the total number of Calculation Intervals in the applicable month.

(b) If the total rated power of the Facility inverters associated with the Installed Storage Capacity as measured to the Delivery Point is less than the Guaranteed Storage Capacity when charging and the Guaranteed Storage Capacity when discharging, in each case at 45°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient temperature derate to the applicable Calculation Interval.

2. Storage Availability Adjustment. The "**Storage Availability Adjustment**" shall be calculated as follows and applied to the calculation of the Storage Capacity Payment due for the next month after the end of the monthly period for which the Monthly Storage Availability is calculated.

(a) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

Storage Availability Adjustment = 100% (expressed as a decimal)

(b) If the Monthly Storage Availability is less than the Guaranteed Storage Availability and greater than or equal to [redacted] then:

Storage Availability Adjustment = Monthly Storage Availability (expressed as a decimal)

(c) If the Monthly Storage Availability is [redacted] then:

Storage Availability Adjustment = 100% - [(Guaranteed Storage Availability - Monthly Storage Availability) x [redacted]] + [(Secondary Unavailability, expressed as a decimal) x [redacted]]

where:

"**Secondary Unavailability**" = the quotient of (a) sum of all Monthly Unavailable Calculation Intervals in the applicable month that resulted from a Force Majeure Event for which Seller is the claiming Party [redacted], divided by (b) the Total Calculation Intervals.

provided, in no event will the Storage Availability Adjustment be less than zero (0).

EXHIBIT N

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days' Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit N and shall establish the initial Storage Capacity and Round-Trip Efficiency hereunder based on the actual capacity and round-trip efficiency of the Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, but not more than once per Contract Year, upon no less than ten (10) Business Days' Notice to Seller, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test and to update the Facility's PMax and other relevant information and values in the CAISO's Master Data File and Resource Data Template (or successor data systems). In addition, Buyer shall have the right to require a retest of the most recent Storage Capacity Test (and to update the Facility's PMax and other relevant information and values as specified above) at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test or any other guaranteed operational characteristics are not being met. Seller shall have the right to perform a Storage Capacity Test or run a retest of any Storage Capacity Test at any time during any Contract Year upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. [redacted]

D. Test Results and Re-Setting of Storage Capacity. No later than ten (10) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and

findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.11(c) of this Agreement and Part II(I) below, the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Capacity, as such Guaranteed Storage Capacity may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Capacity, [redacted]

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test, each subsequent Storage Capacity Test, and all re-tests thereof permitted under paragraph B above) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit N. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit N as a "**SCT**". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Test Elements. Each SCT shall include the following test elements:

- Electrical output at Maximum Discharging Capacity at the Storage Facility Meter (MW) (for purposes of this Exhibit N, the Maximum Discharging Capacity will be the lesser of the Maximum Discharging Capacity set forth in Exhibit O and the maximum discharging capacity that the Facility is capable of achieving during such SCT) at the Storage Facility Meter (MW);

- Electrical input at Maximum Charging Capacity at the Storage Facility Meter (MW) (for purposes of this Exhibit N, the Maximum Charging Capacity will be the lesser of the Maximum Charging Capacity set forth in Exhibit O and the maximum discharging capacity that the Facility is capable of achieving during such SCT) at the Storage Facility Meter (MW).

- Amount of time between the Facility's electrical output going from 0 to Maximum Discharging Capacity;

- Amount of time between the Facility's electrical input going from 0 to Maximum Charging Capacity;

- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity (MWh).

B. Parameters. During each SCT, the following parameters shall be measured (or estimated, in the case of Station Power) and recorded simultaneously for the Facility, at ten (10) minute intervals:

(1) Time;

(2) Charging Energy;

(3) Discharging Energy;

(4) Stored Energy Level (MWh);

(5) Station Power.

C. Site Conditions. During each SCT, the following ambient conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg); and

(3) Ambient air temperature (°F).

D. Test Showing. Each SCT must demonstrate that the Facility:

(1) successfully started;

(2) operated for at least four (4) consecutive hours at Maximum Discharging Capacity;

(3) operated for at least four (4) consecutive hours at Maximum Charging Capacity;

(4) is able to ramp upward and downward at the contract Ramp Rate or as limited by CAISO ramp rate limitations; and

(5) is able to deliver Discharging Energy to the Delivery Point as measured by the Storage Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity.

E. Test Conditions.

(i) General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity.

(ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.F below.

(iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

(iv) Ambient Temperature. For tests requested by Buyer (and not for any CAISO-initiated test, which shall occur when directed by CAISO), the average ambient temperature, based on an aggregate of 1-minute resolution data collected throughout the SCT, must be within the range of 8 – 33 degrees Celsius.

F. Incomplete Test. If any SCT is not completed in accordance herewith, either Party may in its reasonable discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated.

G. Final Report. Within ten (10) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

(1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;

(3) the level of Installed Storage Capacity or Storage Capacity (as applicable), charging capacity, discharging capacity, charging ramp rate, discharging ramp rate, Round-Trip Efficiency, and Stored Energy Level determined by the SCT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated on dates and at times reasonably acceptable to the Parties.

H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to initial synchronization, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit N with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("**Supplementary Storage Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit N.

I. Adjustment to Storage Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours plus the time for ramping the Facility from 0 to the Maximum Discharging Capacity as limited by CAISO of discharge (up to, but not in excess of, the product of (i) the Guaranteed Storage Capacity, as such Guaranteed Storage Capacity may have been adjusted (if at all) under Exhibit B, multiplied by (ii) 4 hours) shall be divided by four hours to determine the Storage Capacity, which shall be expressed in MW AC, and shall be the new Storage Capacity in accordance with Section 4.11(c) of this Agreement.

J. [redacted]

K. Following the initial Storage Capacity Test conducted prior to the Commercial Operation Date, upon request of Seller, Buyer shall consider in good faith an alternate methodology for conducting a Storage Capacity Test by reference to the operational data reflecting the net output of the Facility from the point of interconnection. Upon Seller's request, Seller and Buyer shall work in good faith to establish a mutually acceptable methodology for demonstrating the Storage Capacity through such operational data. If Buyer and Seller mutually agree in writing on an alternate methodology, such alternate methodology shall become the Storage Capacity Test used to establish the Storage Capacity for all purposes of this Agreement, including compensation under Section 3.2.

EXHIBIT O

OPERATING RESTRICTIONS

Maximum Cycle Limits:	Equal to the maximum full cycle equivalents. A full cycle equivalent will be deemed to have occurred when the cumulative amount of energy delivered from the Facility equals the Maximum Stored Energy Level. This could occur in one continuous discharge or over multiple discharges. Annual Maximum: 365 cycles Daily Maximum: 1.75 cycles
Ramp Rates:	Ramp rates below are the capability of the Facility but do not reflect CAISO limitations imposed on the dispatch. Dmin to Dmax: up to 100%/s Cmin to Cmax: up to 100%/s Dmax to Dmin: up to 100%/s Cmax to Cmin: up to 100%/s Regulation ramp rate: 200 MW/min
System Response Time:	Idle to Dmax: <3s Idle to Cmax: <3s Dmax to Cmax: <3s Cmax to Dmax: <3s Dmin to Cmin: <3s Cmin to Dmin: <3s

Maximum Stored Energy Level:	180 MWh, number in MWh representing maximum amount of energy that may be charged to the Facility
Minimum Stored Energy Level:	0 MWh, number in MWh representing the lowest level to which the Facility may be discharged
Maximum Charging Capacity:	45 MW, number in MW representing the highest level to which the Facility may be charged
Minimum Charging Capacity:	0.1 MW, number in MW representing the lowest level at which the Facility may be charged
Maximum Discharging Capacity:	180 MW, number in MW representing the highest level at which the Facility may be discharged
Minimum Discharging Capacity:	0.1 MW, number in MW representing the lowest level at which the Facility may be discharged
Maximum State of Charge (SOC) during Charging:	100%
Minimum State of Charge (SOC) during Discharging:	0%
[redacted]	[redacted]
Other Operating Limits	The average resting state of charge per Contract Year must be below fifty percent (50%).
Monthly Deep Discharge Cycle	Once per month, in coordination with Seller, charge the Facility to the then-current energy storage capability of the Facility (which may exceed the Maximum Stored Energy Level), and then fully discharge the Facility to the Minimum Stored Energy Level

EXHIBIT P

METERING DIAGRAM

[redacted]

EXHIBIT Q

RTE SHORTFALL PAYMENTS

In the event that the RTE_M is less than the GRTE for a month during the Delivery Term, the calculation of the monthly Storage Capacity Payment under Section 3.2 for such month shall include a reduction for the "**RTE Shortfall Payment**", calculated as follows:

$(GRTE - RTE_M)$ x Average Monthly Operating Price x $RTEF_M$ x TCE_M

where:

GRTE = the Guaranteed Round-Trip Efficiency

RTE_M = the Round-Trip Efficiency, as established by the most recent Storage Capacity Test for the applicable month.

The "**Average Monthly Operating Price**" means the average of the Day-Ahead Market LMPs for the hours in the applicable month for which there was a Charging Notice or Discharging Notice.

The "**Round-Trip Efficiency Factor**" or "$RTEF_M$" for each month is determined as follows:

If $RTE_M \geq GRTE$, then $RTEF_M = 0$

If $RTE_M < GRTE$ and $RTE_M \geq 70\%$, then $RTEF_M = 1.2$

If $RTE_M < 70\%$, then $RTEF_M = 1.5$

TCE_M = the total Charging Energy charged to the Facility in the applicable month.

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PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: April 14, 2023
BOARD MEETING DATE: April 27, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Doug Karpa, Senior Regulatory Analyst
Leslie Brown, Director of Account Services

SUBJECT: Adopt a Resolution Approving Plan to Delay Compliance with Uploading Time Varying Rates to the Market Informed Demand Automation Server (MIDAS) Database (Action)

RECOMMENDATION:
Adopt a Resolution Approving Plan to Delay Compliance with Uploading Time Varying Rates to the Market Informed Demand Automation Server (MIDAS) Database.

BACKGROUND:
In January 2023, the California Energy Commission adopted new standards to facilitate load management in California to better align electricity use with renewable generation and energy prices. The two main requirements in these standards that apply to Peninsula Clean Energy are: 1) to develop a marginal cost-based rate offering, which would charge participating customers for the real time costs of service, or alternatively to implement other programs to align customer load with wholesale costs, and 2) to upload our time-dependent rates to the California Energy Commission's Market Informed Demand Automation Server (MIDAS) database. While the plan for marginal cost-based rates or alternatives will not be due until later this year, the regulations would require upload of time-dependent rates by July 1, 2023.

This timeline has unfortunately become infeasible because the California Energy Commission's implementation of the database and upload protocols has been significantly delayed. The data and technical issues involved in developing this database and the details of formatting and uploading these rates have proved unexpectedly complex, with the potential individual rate entries potentially running into the millions. As a result, neither the MIDAS database, nor the technical protocols needed for uploading the rates, appear likely to be completed soon.

This delay will naturally delay Peninsula Clean Energy's ability to upload rates to the database, which will in turn take significant time to prepare, test, validate and upload. Thus, it is imperative that the deadline for compliance with the new regulation be pushed back until after the completion of the MIDAS database and all protocols, plus a reasonable timeframe for staff to prepare, test, and validate our uploaded rates.

Procedurally, requesting a delay requires the Board to formally approve a plan to delay compliance with the regulation. Since there are no other elements to the plan currently, this plan would simply involve a delay in compliance until up to 12 months after the completion of the database and finalization of all protocols to allow testing and validation of PCE data. This timeline was developed in coordination with our fellow CCAs, and the IOUs, all of which face the same issues (see accompanying joint LSE letter to the California Energy Commission requesting that it delay the compliance deadline)

DISCUSSION:

Load modification is an important decarbonization strategy that Peninsula Clean Energy is already moving forward with, especially with our behind-the-meter programs. The intent behind the MIDAS database is to provide third-party providers and customers with enough detailed information about each customer's time-dependent rates to allow customers to better shift their energy use to better match the time-varying rates, theoretically saving on overall costs. Given the potential for load modification to facilitate our ability to match load with generation, Peninsula Clean Energy has an interest in seeing this effort succeed.

However, the complexity of the database has meant that designing and implementing the database appears to be considerably more difficult that the Commission envisioned when the regulation was adopted. To ensure that the database effort is successful and does not run into serious problems when third parties and customers begin to work with the database, it is critical to give both the Energy Commission and Peninsula Clean Energy staffs adequate time to design, test, and implement this database.

The plan presented for adoption here would be flexible enough to ensure that the process is not rushed to maximize the potential for success.

FISCAL IMPACT:

None

STRATEGIC PLAN:

This Resolution would support our ongoing cooperation with state Commissions and facilitate improved load shifting to help meet our 24/7 targets while operating within the capacity of our existing Staff resources.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION APPROVING PLAN TO DELAY COMPLIANCE WITH UPLOADING TIME VARYING RATES TO THE MARKET INFORMED DEMAND AUTOMATION SERVER (MIDAS) DATABASE

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

WHEREAS, the California Energy Commission adopted new regulations in January 2023 requiring each large CCA to upload its time-dependent rates to the California Energy Commission's Market Informed Demand Automation Server (MIDAS) database by July 1, 2023 in California Code of Regulations, Title 20, Section 1623.1(c); and

WHEREAS, the California Energy Commission's implementation of the database and upload protocols has been significantly delayed; and

WHEREAS, once the California Energy Commission has completed the design and implementation of the database and protocols, the upload process for Peninsula Clean Energy's time-dependent resources will take significant time to prepare, test, validate and upload; and

WHEREAS, the delay in the implementation of the database and protocols has rendered compliance with this regulation by July 1, 2023 infeasible; and

WHEREAS, the California Energy Commission's regulations at California Code of Regulations, Title 20, Section 1623.1(a)(2) authorizes "the rate approving body of a … Large CCA [to] approve a plan … that delays compliance... with the requirements of Subsections 1623.1(b)-(c) if the rate approving body determines that the plan demonstrates …. "(A) that despite … [the] Large CCA's good faith efforts to comply requiring timely compliance with the requirements of this article would result in extreme hardship to the … Large CCA, [and] C) requiring timely compliance with the requirements of this article would not be technologically feasible or cost-effective."; and

WHEREAS, the Board of Peninsula Clean Energy, as the rate approving body of a Peninsula Clean Energy, a Large CCA, finds that timely compliance with this regulation would result in extreme hardship to Peninsula Clean Energy and would not be technologically feasible or cost effective, given time and staff constraints, and

WHEREAS, staff, in coordination with other CCAs and the IOUs have determined that up to a 12-month delay after the completion of the MIDAS database and all protocols is a reasonable timeframe for compliance,

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board approves a plan to delay compliance with the requirements of California Code of Regulations, Title 20, Section 1623.1(c) until up to 12 months after the California Energy Commission has completed and finalized the MIDAS database and all protocols required for the upload of Peninsula Clean Energy's time-dependent rates to the database, and

Delegates to the Chief Executive Officer and staff the authority to draft, finalize, and submit the plan to implement this resolution to the California Energy Commission.

* * * * * *

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: April 24, 2023
BOARD MEETING DATE: April 27, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Leslie Brown, Director of Account Services

SUBJECT: Discussion on Sunset of Net Energy Metering (NEM) 2.0 and Transition to NEM 3.0/Net Billing (Discussion)

BACKGROUND

On December 15, 2022, the California Public Utilities Commission (CPUC) approved NEM 3.0 (a.k.a. Net Billing), a new policy that replaced NEM 2.0 for new interconnections applications received April 15, 2023.

Net Energy Metering has existed in California for over 20 years and provided the policy structure and economic support for the significant proliferation of rooftop solar throughout California. Under net metering, utility customers, with their own solar and/or wind self-generation facilities, earn credits for the excess electricity their system provides to the grid. Under NEM 1.0 and NEM 2.0, net metering policies have a one-to-one offset, meaning the price of a kWh supplied to the grid is equal to the price of pulling a kWh off the grid. NEM 3.0 (Net Billing) will change this price ratio.

The new Net Billing program differs quite a bit from Net Energy Metering, and as such there is still much that PCE staff is still learning with regard to our options for billing and rate making as applied to Generation charges/credits. This memo and subsequent Board presentation will serve as an introduction to this transition with more discussions and formal policy proposals to come.

DISCUSSION

The main impact of NEM 3.0 is that it reduces compensation for excess power sent to the electric grid. Under NEM 1.0 & 2.0 customers are offered a credit equal to the retail rate of

electricity for exported solar production: this is known as one-to-one net metering in which you're credited at the same rate for solar exports as what you'd pay to use electricity from the grid. In NEM 3.0, the CPUC establishes a new rate for crediting solar exports, shifting the structure from net metering to net billing, which is much lower in value. NEM 3.0 is based on "avoided cost" rates, the exact rate varies depending on the hour of the day, day of the week (i.e., weekday vs. weekend), and month you export the energy: in fact, there are 576 possible export rates in total. However, on average, the avoided energy costs rates come out to about 25 percent of retail electricity rates during those same hours, meaning the value of net metering credits will decrease by about 75 percent under NEM 3.0**.**

The reduced net metering credits will have a significant impact on solar savings for new solar installations. Under NEM 2.0, most homeowners in California have a solar payback period of roughly 5 to 6 years. Under NEM 3.0, that number will shift closer to 9 to 10 years.

Prospective Solar Customers

When the Net Billing Tariff takes effect, it will establish the following rules:

- **New rate plans**: Homeowners who get solar panels must sign up for "highly differentiated" time of use rate plans, under which electricity is very expensive during times of peak usage, and much less expensive when usage is lower. For PG&E customers, "E-ELEC" will be the rate plan available for Residential Net Billing.
- **Energy credits**: The IOU's will offer significantly reduced credits for excess energy, averaging about 5 to 6 cents per kilowatt-hour (kWh), compared to the retail rate credit for NEM customers. The credits are determined by the most recent Avoided Cost Calculator, or ACC (a complex tool used to calculate the cost a utility avoids for each kilowatt-hour [kWh] of electricity it doesn't buy when rooftop solar panels provide the energy instead).
- **ACC Plus incentive**: PG&E residential customers who sign up for Net Billing will have access to a new incentive called the ACC Plus, which adds a little value to each kWh of exported solar energy. This means slightly better bill savings.
- **Legacy period**: The value of energy credits and ACC Plus incentives will be locked in for 9 years after signup and follow a schedule based on the state's most current ACC. After the legacy period, the customer will receive energy credits based on values from the then-current ACC.
- **Low-income customers**: Residential customers of PG&E and SCE who qualify for the CARE and FERA low-income programs will get a larger ACC Plus incentive designed to allow them to see a simple payback of their cost to go solar in 9 years.
- **System oversizing**: A Net Billing customer can install a system that will produce up to 150% of their previous 12-months' energy usage as long as they attest they will increase their usage up to that amount in the next 12 months; for example, by converting natural gas appliances to electric or purchasing an EV they will charge at home.

- **Monthly bill payment**: A Net Billing customer will be responsible for paying all monthly charges on their utility bill, with any additional credit earned from exported solar energy carried over to the next month.
- **Current NEM customers**: Customers who currently receive credits under the NEM 1.0 and 2.0 programs will continue to receive those credits for 20 years after their original interconnection date. When these customers reach the end of that period (some already have or will soon), they will not receive the ACC Plus or be covered under the legacy period. Instead, they will be subject to the current ACC values for exported solar energy.

What does this mean for PCE?

PCE customers applying for interconnection from April 15, 2023 and onward will be subject to the new NEM 3.0 policies. PCE will still be responsible for setting its rates and policies for compensation for excess solar generation. How flexible PCE will be regarding offering an alternative to the ACC is still under review. It should be noted that even if PCE were to offer retail compensation for excess solar generation more in line with NEM 2.0 policies. that would only apply to the PCE (generation) portion of the bill and customers would still be subject to significantly reduced compensation from PG&E for the Transmission and Distribution (T&D) portion of the bill.

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: April 13, 2023
BOARD MEETING DATE: April 27, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Gwen Rose, Director of Marketing &
Leslie Brown, Director of Account Services

SUBJECT: Update on Marketing, Outreach Activities, and Account Services

BACKGROUND

The Marketing, Community Relations, and Account Services Teams are responsible for enhancing Peninsula Clean Energy's brand reputation, educating and engaging customers, driving participation in programs, and ensuring customer satisfaction and retention. Tactics include community outreach, content creation and storytelling through owned (e.g. online, social media), earned (e.g. public relations), and paid media (advertising), school engagement programs, and customer care.

DISCUSSION

The following is an update of activities that are currently underway. Please refer to the "Strategic Plan" section below for further information/explanation as to how these activities support Peninsula Clean Energy's strategic plan objectives.

Zero Percent Loan Program and Heat Pump Rebates
These programs are being promoted in our Energy Programs Bulletin, which is emailed semi-monthly to about 200,000 residential customers, and in paid search. In the last 30 days, 1,862 users visited the Zero Percent Loan webpage, 2,228 visited the heat pump water heater program page, and 1,990 visited the heat pump heating and cooling program page.

Electrification Messaging and Campaign Support of Decarbonization
We are encouraging electrification in email communications and online advertising. In the last 30 days, 2,470 users have visited our all-electric web page. Our search ads for this campaign are currently achieving a click-through rate of 9.84% at a cost of $1.67 per click.

The campaign supports our organizational priority to contribute to our community reaching a goal of 100% greenhouse gas-free for buildings and transportation by 2035.

Used Electric Vehicle (EV) Campaign
In the past 30 days, 1,668 users visited the main EV page on our web site. A search advertising campaign addressing barriers and benefits of electric vehicles is currently achieving a click-through rate of 4.87% at a cost of $2.54 per click.

All-Electric Leader Awards Program
Awards were presented at the Sustainable San Mateo County's 24th Annual Awards celebration at the College of San Mateo on March 30, 2023. Details of the award winners are on our website at https://www.peninsulacleanenergy.com/all-electric-projects/.

Outreach Grants
Some recent and upcoming program highlights include:

- Staff will conduct a training for community outreach volunteers organized by Healthways in Daly City
- Outreach grantee organizations will begin organizing focus groups to provide feedback to Peninsula Clean Energy staff on messaging and programs.

Schools and Youth Programs
Peninsula Clean Energy is supporting energy education in various ways, including:

- Funding green awareness field trips for junior high and high school students through the San Mateo County Office of Education Career and Technical Education program. The field trips are designed to interest students in careers as electricians and in other related careers that support our program implementation.
- Funding student stipends for the Youth Climate Ambassadors program
- Sponsoring the annual Youth Climate Film Festival

Los Banos Update
Our local Los Banos representative Sandra Benetti continues providing information and answering customer questions. She is tabling twice monthly on bill pay dates at Los Banos City Hall, gave presentations at local high schools and community groups, and drafted an article for a local newspaper about rates and billing. She is also conducting outreach to eligible local public agencies about the GovPV program, and to local businesses and developers about EV charging support.

News & Media
Full coverage of Peninsula Clean Energy in the news can be found on our News & Media webpage.

ENROLLMENT UPDATE

ECO100 Statistics (since March report)

Total ECO100 accounts at end of March:	6,553
ECO100 accounts added in March:	102
ECO100 accounts dropped in February:	32
Total ECO100 accounts at the end of January:	6,483

Enrollment Statistics

Opt-outs during March 2023 were 141, which is 43 fewer than the previous month of February 2023 (184). This includes 57 opt outs in our new service territory of Los Banos during the month of March and 84 from San Mateo County during this month. In April, there have been an additional 17 opt outs from Los Banos and 24 opt outs from San Mateo County as of April 14th, 2023. Total participation rate across all of San Mateo County as of April 14th was 97.07%. The participation rate for the City of Los Banos as of the end of March 2023 was 89.05%.

In addition to the County of San Mateo, there are a total of 15 ECO100 cities which means they have elected to receive 100% renewable energy for their municipal accounts. As of April 14, 2023, the ECO100 towns and cities include: Atherton, Belmont, Brisbane, Burlingame, Colma, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Portola Valley, Redwood City, San Carlos, San Mateo, and Woodside.

The opt-up rates below include municipal accounts, which may noticeably increase the rate in smaller jurisdictions.

Active Accounts as of April 17th							
TOT	RES Count	COM Count	Active Count	Eligible Count	Participation Percent	ECO100 Count	ECO100 Percent
ATHERTON INC	2,405	220	2,625	2,696	97%	60	2%
BELMONT INC	10,700	926	11,626	11,947	97%	197	2%
BRISBANE INC	1,972	493	2,465	2,525	98%	92	4%
BURLINGAME INC	13,376	1,958	15,334	15,674	98%	348	2%
COLMA INC	580	291	871	882	99%	32	4%
DALY CITY INC	30,876	1,967	32,843	34,009	97%	114	0%
EAST PALO ALTO INC	7,164	444	7,608	7,979	95%	27	0%
FOSTER CITY INC	13,678	870	14,548	14,841	98%	339	2%
HALF MOON BAY INC	4,201	631	4,832	4,986	97%	114	2%
HILLSBOROUGH INC	3,788	143	3,931	4,039	97%	71	2%
LOS BANOS INC	12,393	1,267	13,660	15,340	89%	4	0%
MENLO PARK INC	14,043	1,718	15,761	16,038	98%	529	3%
MILLBRAE INC	8,777	644	9,421	9,717	97%	112	1%
PACIFICA INC	13,985	860	14,845	15,410	96%	181	1%
PORTOLA VALLEY INC	1,460	130	1,590	1,690	94%	1,488	94%
REDWOOD CITY INC	31,449	3,309	34,758	35,597	98%	726	2%
SAN BRUNO INC	14,753	1,068	15,821	16,512	96%	93	1%
SAN CARLOS INC	12,196	2,061	14,257	14,626	97%	326	2%
SAN MATEO INC	39,717	3,866	43,583	44,698	98%	689	2%
SO SAN FRANCISCO INC	21,467	3,084	24,551	25,506	96%	123	1%
UNINC SAN MATEO CO	20,822	2,966	23,788	24,595	97%	650	3%
WOODSIDE INC	2,005	213	2,218	2,272	98%	62	3%

Table reflects data as of April 17th, 2023

STRATEGIC PLAN

This section describes how the above Marketing and Community Care activities and enrollment statistics relate to the overall goal and objectives laid out in the strategic plan. The table indicates which objectives and particular Key Tactics are supported by each of the Items/Projects discussed in this memo. The strategic goal for Marketing and Customer Care is: Develop a strong brand reputation that drives participation in Peninsula Clean Energy's programs and ensures customer satisfaction and retention.

Item/Project	**Objective A**: Elevate Peninsula Clean Energy's brand reputation as a trusted leader in the community and the industry	**Objective B**: Educate and engage stakeholders in order to gather input, inspire action and drive program participation	**Objective C**: Ensure high customer satisfaction and retention
Social Media Policy	KT3 Tell the story of Peninsula Clean Energy through diverse channels		
Zero Percent Loan and Heat Pump Rebates programs		KT6: Promote programs and services, including community energy programs and premium energy services	
Electrification Messaging Project		KT5: Provide inspirational, informative content that spurs action to reduce emissions.	
EV Campaign		KT6 (see above)	
All-Electric Leader Awards		KT6 (see above)	
Los Banos Update	KT4: Engage community through participation in local events	KT6 (see above)	
Los Banos Update	KT4: Engage community through participation in local events		

News and Media Announcements	KT1: Position leadership as experts on CCAs and the industry KT2: Cultivate relationships with industry media and influencers KT3 (see above)		
ECO100 and Enrollment Statistics			Reports on main objective C

* “KT” refers to Key Tactic

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: April 14, 2023
BOARD MEETING DATE: April 27, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Gwen Rose, Director, Director of Marketing and Community Relations Darren Goode, Media Relations Consultant

SUBJECT: First Quarter (Q1) 2023 Media Relations Summary

BACKGROUND

Media Relations, a specialization within the Marketing discipline, focuses on enhancing Peninsula Clean Energy's reputation and leadership position by garnering earned media attention. This is the first of a series of quarterly reports on media relations activities and coverage for 2023.

DISCUSSION

1. Spotlighting 24/7 Renewable Power
In a special quarterly report in the February board packet, we highlighted initial results of the highly successful media and broader public outreach effort regarding our Jan. 10 press release announcing the new MATCH 24/7 renewable model and white paper. That special quarterly report included seven articles in major outlets, two podcast interviews and several event opportunities featuring Jan Pepper.

Since that report was finalized, the white paper and modeling was also spotlighted in a Cleartrace podcast and Jan interviewed with UC Berkeley's Climate Break in a podcast that is expected to be posted in late April or early May. She is also scheduled to record an interview on the 24/7 effort May 5 for Aurora's Energy Unplugged podcast.

Jan also detailed how long-duration storage can assist our 24/7 renewable efforts during a virtual panel discussion hosted by the California Energy Storage Alliance and Energy Dome and was joined by co-authors Sara and Mehdi in presenting the white paper and modeling at a Feb. 21 webinar for CalCCA members. We also gave permission to the Passive House Institute US (Phius) to use graphics in the white paper for digital magazine articles.

Jan also spoke at a March 30 renewable energy webinar for Alberta, Canada elected officials and other influencers hosted by the Municipal Climate Change Action Centre, Pembina Institute and

Business Renewables Centre-Canada. The webinar invite was a direct result of seeing the 24/7 white papers and to showcase Peninsula Clean Energy as a "successful example of aggregation being applied to procure cheap renewable power." She also spoke on a CivicWell Policymakers Conference panel about solar, battery storage and grid reliability with California Public Utilities Commissioner Genevieve Shiroma and representatives from Sacramento Municipal Utility District and the Los Angeles County Regional Planning Commission.

2. Rate Discount Announcement
We announced we are keeping our ECOplus electric generation rates for all our San Mateo County and the City of Los Banos customers at least five percent below PG&E's baseline electric generation rate. The release featured one of our newest board members, Millbrae Councilmember Anders Fung, and a carefully-crafted graphic highlighting the five-percent generation rate discount. We detailed that not only is our ECOplus power generation cleaner, it has saved customers $107 million, including $17 million in 2022 alone, compared with what they would have paid for electric generation with PG&E service. Patch.com posted an article.

3. All-Electric Building Awards Announcement
We announced our 2023 all-electric building award winners, showcasing work of leading residential and commercial builders, property owners and design teams in San Mateo County. We included quotes from Rick DeGolia and new Redwood City board member Elmer Martinez Saballos. Redwood City Pulse posted an article.

4.GovPV Announcement
We are drafting an announcement on reaching innovative agreements to install 1.7 megawatts of solar power on 12 public buildings in our service territory, including as one of the first public agencies to utilize newly expanded federal renewable energy incentives. We are reaching out to a county commissioner and the county itself to see about prospects of issuing a joint release and/or including quotes for the announcement. We are planning on issuing the release during the week of April 17 ahead of Earth Day and following what we hope will be approval by the Board of Supervisors for installing solar in the San Mateo County Human Services Agency Center in Redwood City.

5. Joint Lyft Announcement
We are finalizing a joint announcement with Lyft on reaching the milestone of serving 250,000 rides through our Ride-Hail Electrification Pilot Program. The release is tentatively set for the week of April 24.

6. Rafael Featured By S&P Global
Rafael was featured in two stories by S&P Global's Tom Christopher regarding California building electrification retrofits and our reach code efforts.

7. Community Outreach Grants Announcement
We announced the awarding of 14 grants to 13 community organizations - including for the first-time for those housed in Daly City and Los Banos - to increase outreach to disadvantaged and other communities about utility bill discounts and a range of other clean energy program benefits. It was covered by Climate Online-Redwood City.

8. Jan's Public Radio Interview
Jan interviewed about her pivotal role in the creation of renewable energy credits with Reveal's Najib Aminy for a weekly investigative show airing on more than 500 public radio stations.

9. Renewable PPA Announcement
We announced the signing of four renewable and storage projects, as well as the operational start of the Heber 2 geothermal project, which collectively will help our effort to be the most ambitious utility in providing customers with 24/7 renewable power. The release was posted by Power Magazine and was written about by the American Public Power Association.

10. New Project Media Request
We worked collaboratively internally to provide written responses to questions from New Project Media's Jillian Farmer about the CPUC's consideration to add 4GW of required procurements to the Mid-Term Reliability order.

11. More Media
Subsidies for zero-gas appliances, San Mateo Daily Journal letter to the editor, March 31
We all benefit, San Mateo Daily Journal letter to the editor, March 31
Making a difference locally, San Mateo Daily Journal letter to the editor, March 31
Electrifying your home is smart and cost effective, San Mateo Daily Journal letter to the editor, March 17
Natural gas is very bad, we can't wait, San Mateo Daily Journal letter to the editor, March 16
Bay Area moving away from gas, San Mateo Daily Journal, March 16
Bay Area to begin phasing out gas heaters this decade, Sherry Listgarten column, March 15
Giant batteries augment, replace US power plants on massive scale, S&P Global, Feb. 15
How to get contractors on board with heat pumps and electrification, Canary Media, Feb. 8
San Carlos cooling on electrification, San Mateo Daily Journal, Jan. 30
Former Tesla employees design EV chargers in disadvantaged communities, PV Magazine, Jan. 25
Burlingame to allow electrification exceptions, San Mateo Daily Journal, Jan. 21
Belmont officials seek more electric in homes, San Mateo Daily Journal, Jan. 17
Leeward secures $260M in financing for Chaparral Springs project, Solar Industry Magazine, Jan. 10

STRATEGIC PLAN

This section describes how Media Relations activities relate to the overall goal and objectives laid out in the strategic plan. Media Relations The strategic goal for Marketing and Customer Care is: Develop a strong brand reputation that drives participation in Peninsula Clean Energy's programs and ensures customer satisfaction and retention. Media Relations' efforts relate specifically to Objectives A and B in the strategic plan.

Item/Project	**Objective A**: Elevate Peninsula Clean Energy's brand reputation as a trusted leader in the community and the industry	**Objective B**: Educate and engage stakeholders in order to gather input, inspire action and drive program participation
Items 5, 6, 7, 8	KT1: Position leadership as experts on CCAs and the industry	
Items 8, 12	KT2: Cultivate relationships with industry media and influencers	

Items 1, 2, 3, 4, 5, 9, 11, 13, 14	KT3: Tell the story of Peninsula Clean Energy through diverse channels	
Item 10		KT5: Provide inspirational, informative content that spurs action to reduce emissions

* “KT” refers to Key Tactic

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: April 14, 2023
BOARD MEETING DATE: April 27, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority (PCE) Board of Directors

FROM: Jeremy Waen, Director of Regulatory Policy
Doug Karpa, Senior Regulatory Analyst
Matthew Rutherford, Senior Regulatory Analyst
Zsuzsanna Klara, Regulatory Compliance Analyst

SUBJECT: Update Regarding Regulatory Policy Activities

SUMMARY

Jeremy continues to direct the team, oversee key proceedings relating to the Power Charge Indifference Adjustment (PCIA) and annual rate adjustments.

Doug has been particularly heavily focused on work to reform the California Public Utilities Commission's (CPUC) Resource Adequacy construct and concepts for ensuring resources are procured within the IRP construct.

Matthew has continued his work in supporting PCE's programmatic efforts through Transportation Electrification, Building Decarbonization, Resiliency, Supplier Diversity, Demand Flexibility, Demand Response, and DAC-Green Tariff matters.

Zsuzsanna worked with the Power Resources and the Programs team on coordinating the filings due in February and March. She is also focused on the future challenges on the Green-e program and coordinating the Meet & Greets with CPUC and CEC Commissioners.

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Regulatory Compliance

In February Zsuzsanna focused on coordinating the annual Meet & Greets with the CPUC and CEC Commissioners and preparing the necessary presentation materials with team members.

In the last couple of weeks Zsuzsanna led the discussions with other CCAs and the Sacramento Municipal Utility District regarding the news that California Air Resources Board (CARB) may run out of allowances for the 2023 Green-e Energy reporting year. The CCAs would be interested to lobby CARB to allocate more allowances to Voluntary Renewable Energy Program (VREP), and lobby Center for Resource Solutions (CRS) to change the requirements for the Green-e program. PCE is looking for potential joint advocacy options with other CCAs POUs and IOUs.

Zsuzsanna coordinated the filings of data requests for the Power Resources team and the Programs for having up-to-date information about the status of the monthly ongoing filings and the February and March due filings.

In February/March the main compliance obligations are the following:

- Procurement Status Report Data Request /Summer Reliability Data Request
- Emission Performance Standard Letter
- RA / PCIA Semi Annual Report
- QFER quarterly report – 1306B filing
- CA RPS Compliance Period 3 (2017-2020) Filing (CPUC) - Due TBD
- GO156 Supplier Diversity Report
- 2023 Padilla Report Data Request
- VGI Programs and Pilot Metrics – annual report
- CA RPS Compliance Period 3 (2017-2020) Filing (CPUC)
- PCE Advice Letter 29-E about DAC-GT and CSGT's tariff, solicitation materials and ME&O Plan updates pursuant to resolution E-212.

Zsuzsanna also works with Matthew and Power Resources team on the DAC-GT Annual Budget Advice Letter which is due on April 4th.

Integrated Resource Planning & Resource Adequacy

In Resource Adequacy, the CPUC adopted the slice of day methodology for the RA program starting in 2025. The slice of day methodology would assign fixed profiles of RA value for wind and solar resources, so that the value of these resources would no longer continue to degrade over time. The final Decision includes somewhat more conservative values for wind and solar than the proposed Decision. The specific details of the methodologies for storage and other elements remain to be determined.

In the Integrated Resources Planning proceeding, we are still awaiting a proposal on a systematic procurement approach to ensure the CPUC no longer engages in ad hoc procurement orders.

(Public Policy Objective A, Key Tactic 1, and Key Tactic 2; Public Policy Objective C, Key Tactic 3)

Demand Flexibility Through Rates

In June 2022, the CPUC issued an order instituting a rulemaking to enable widespread demand flexibility through electric rates. The CPUC aims to established demand flexibility policies and modify electric rates to advance several objectives: (a) enhance the reliability of California's electric system; (b) make electric bills more affordable and equitable; (c) reduce the curtailment of renewable energy and greenhouse gas emissions associated with meeting the state's future system load; (d) enable widespread electrification of buildings and transportation to meet the state's climate goals; (e) reduce long-term system costs through more efficient pricing of electricity; and (f) enable participation in demand flexibility by both bundled and unbundled customers.

The CPUC has established two separate tracks for Phase 1 of this proceeding. Track A will establish an income-graduated fixed charge for residential rates for all investor-owned electric utilities in accordance with Assembly Bill 205 (Stats. 2022, ch. 61) (AB 205) including small and multi-jurisdictional electric utilities. AB 205 directs the CPUC to ensure that these new fixed charge tiers will result in low-income ratepayers realizing a lower average monthly bill without making any changes to their usage. Track B will streamline and expedite the adoption of demand flexibility rates, e.g. dynamic rate offerings, for large investor-owned electric utilities.

CalCCA is engaged in the proceeding and has established a tiger team as many policy and implementation decisions will include the establishment of a fixed charge for all default residential rates associated with many IOU charges and thereby may impact CCA operations. Such issues include, in Track B, ensuring that CCAs have timely access to granular billing and usage data to allow for the development of dynamic rates to offer to their customers and efficient billing of customers under these new dynamic rates. This type of data sharing has been a point of contention between CCAs and PG&E in many prior CPUC proceedings as the tools PG&E has today to share such data are largely inadequate for the scale of this task. In Track A, CalCCA comments and briefs have focused on ensuring the establishment of the AB 205 income-based fixed charge does not include volumetric generation charges and generation related non-bypassable charges.

Both tracks of the proceeding are still in nascent stages. But it is important to note that the discussion around the income-graduated fixed charge is in regards to how the IOUs will recover their existing fixed costs through the fixed charge on the bill (i.e. not creating new cost categories and will not include the volumetric generation portion of the bill), that the restructuring will mean on average low- and moderate-income customers will see lower bills, and most who have a higher bill will likely only see modest increases.

(Public Policy Objective A, Key Tactic 1, and Key Tactic 2)

CAISO and ENERGY COMMISSION ISSUES

The California Independent System Operator has launched a stakeholder proceeding to evaluate approaches to speeding up the interconnection queue, which has been a critical blockage in bringing new generation projects online in a timely fashion. Dr. Karpa is working with the CalCCA working group to create proposals for improvements to the interconnection process.

The California Energy Commission finalized standards in January 2023 to create requirements for Load Serving Entities, including Peninsula Clean Energy, to develop marginal cost-based rate offerings as well as requirements to upload these rates to an Energy Commission managed database. However, the implementation of that database has been significantly delayed, requiring action from Peninsula Clean Energy to request a delay while the Commission finishes its work (see Agenda Item 11).

(Public Policy Objective A, Key Tactic 1, and Key Tactic 2)

STAKEHOLDER OUTREACH

Dr. Karpa hosted Peninsula Clean Energy's regular monthly call with environmental justice and environmental advocates and other CCA staff on April 7 to discuss transmission planning and issues with legislative proposals to expand CAISO into a regional transmission organization for the western United States. (Public Policy Objective A, Key Tactic 2)

FISCAL IMPACT

Not applicable.

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
Board Correspondence

DATE: April 14, 2023
BOARD MEETING DATE: April 27, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Marc Hershman, Director of Government Affairs

SUBJECT: Update on Peninsula Clean Energy's Legislative Activities

SACRAMENTO SUMMARY:

The 2023-24 state legislative session is underway with policy and budget committees holding hearings throughout the month of April and into early May.

April 28 is the deadline for bills with a fiscal piece to be heard in committee in their house of origin. Those bills that pass the policy committees are then referred to the respective fiscal committees in each house. The fiscal committees have until May 19 to hear those bills and report them to the floor of their respective houses.

May 5 is the deadline for bills that are not fiscal in nature to be heard in committee and then reported to the floor in their house of origin. May 12 is the last date on which policy committees will be until June 5.

June 2 is the last date by which each house can pass a bill introduced in that house.

The state budget must be passed by midnight on June 15.

PENINSULA CLEAN ENERGY SPONSORED LEGISLATION - BROWN ACT BILL

Of significance to local government, including Peninsula Clean Energy, the termination of the State of Emergency has ended the suspension of the Brown Act and local officials will no longer be able to attend meetings virtually from undisclosed, remote locations. At the request of members of the Peninsula Clean Energy Board of Directors, staff have been researching and advancing legislation that would extend these provisions.

We are working closely with Senator Josh Becker on this issue. Senator Becker has introduced SB 537.

SB 537 would allow a board of a multijurisdictional, cross county, local agency with appointed members subject to the Brown Act, such as Peninsula Clean Energy, to meet via teleconference without having to notice each teleconference location.

SB 537 is set to be heard in the Senate Committee on Governance and Finance on April 19. If it passes that committee, it could be heard in the Senate Committee on Judiciary as soon as April 26.

We greatly appreciate the many letters of support for SB 537 from local jurisdictions and elected officials. These include the cities of Atherton, Brisbane, Burlingame, Colma Foster City, San Bruno, San Carlos, San Mateo, Menlo Park Councilmember Betsy Nash

In addition to local support, letters have also been lodged by the League of California Cities, Streets for All, Los Angeles County Sanitation Districts and CCAs Sonoma Clean Power and San Diego Community Power.

Opposition to the bill has come from the ACLU, California News Publishers, Cal Aware, California Broadcasters Association, First Amendment Coalition, Howard Jarvis Taxpayers Association, and the Leadership Council for Justice and Accountability.

There are several other bills that have been introduced that pertain to the Brown Act in both the state Senate and Assembly, demonstrating a significant interest in this issue.

SPECIAL SESSION

At the request of the governor, a special session commenced on December 5. At the time, the governor was seeking rebates for the public, funded by oil companies, to discourage oil and gas price gouging. The governor's initial proposal took the form of a bill, introduced by Senator Nancy Skinner, SBX1-2.

SBx1-2 (Skinner) was amended significantly in March. The amended bill gives the California Energy Commission (CEC) more authority to require oil refiners to share information about their business practices. The law authorizes the CEC to establish a maximum gross gasoline refining margin (max margin) and penalty on gasoline sold by refiners in the state if certain findings are made. It establishes a new division and advisory committee at the CEC and requires various reports and assessments by the CEC to be submitted to the Legislature.

The bill was passed by both house of the Legislature and signed by the Governor on March 28.

FY 2023-24 State Budget

Of great interest to Peninsula Clean Energy and in which we have been actively engaged is the Governor's budget trailer bill introduced earlier this year. In it the Governor seeks

to broaden the scope of procurement by enabling the Department of Water Resources to act as a central procurement entity. The trailer bill also adds a capacity payment penalty for Resource Adequacy deficiencies. Further it seeks to clarify the California Public Utilities Commission's Integrated Resource Plan authority over CCA. All these areas are being addressed by Peninsula Clean Energy and CalCCA in meetings with Administration and state Legislators.

As noted previously, the Legislative Analyst's Office is forecasting a more than a $25 billion deficit for fiscal 2023-24. Some legislators, including Budget Chair Phil Ting, are positing that this will not be as devastating as it might have appeared in years past thanks to prudent marshalling of resources during the recent flush years. The state has a substantial rainy-day fund and much of the recent budget surplus was invested in one-time expenditures and capital projects.

Governor Newsom unveiled his proposed 2023-24 budget on January 10. A revised budget will be advanced by the Governor in May, after receipt of the April tax revenues. However, both the state and federal government have extended the deadline for Californians filing tax returns which could hamper officials from accurately determining the size of revenues available for the next fiscal year.

The Legislature must adopt the budget for the next fiscal year in June, which is months before the new tax filing deadline.

The initial budget proposed by the Governor posits that there will be $22.5 billion in lower funding. He is asking for more than $6 billion in cuts to climate initiatives over the next 3 years, with a proviso that this funding could be restored in the May Revise budget if revenues increase over current projections.

In the 2022 budget cycle the Governor had pushed for a climate package of $54 billion. He is now calling for a scaling back of that effort to $48 billion, of which more than half of the cuts – about $3.3 billion – would come from clean transportation initiatives.

The Legislative Analysts Office has opined that the deficit will be larger than that anticipated by the Governor in his January proposal. Tax revenues continue to lag and with the extension of the filing deadline it will be more difficult than usual to predict revenues for the coming fiscal year. Still, the state budget must be adopted in June.

(Public Policy Objective B, Key Tactic 1)

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: April 14, 2023
BOARD MEETING DATE: April 27, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy
Rafael Reyes, Director of Energy Programs

SUBJECT: Community Programs Report

SUMMARY

The following programs are in progress, and detailed information is provided below:

1. Highlights from Prior Month
2. Building and EV Reach Codes
3. Buildings Programs
   - 3.1. Appliance Rebates and On-Bill Financing
   - 3.2. Low-Income Home Upgrades & Electrification
   - 3.3. Building Pilots
   - 3.4. Refrigerator Recycling
4. Distributed Energy Programs
   - 4.1. Solar and Storage for Public Buildings
   - 4.2. Residential Solar + Battery Backup
   - 4.3. FLEXmarket
   - 4.4. Community Solar, DAC-GT
5. Transportation Programs
   - 5.1. “EV Ready” Charging Incentive
   - 5.2. Used EV Rebate
   - 5.3. EV Ride & Drives/EV Rental Rebate
   - 5.4. E-Bikes for Everyone Rebate
   - 5.5. Municipal Fleets
   - 5.6. Transportation Pilots

DETAIL

1 Highlights from Prior Month

- 30 new smart outlets were installed in a San Mateo apartment building, as part of the EV Ready program, the largest existing building install in the program to date.

- Interconnection applications to meet the NEM 2 grandfathering deadline were submitted for 38 sites in the second round of the Solar and Storage for Public Buildings program.
- East Palo Alto adopted its reach code in March
- Applications for appliance rebates reached a record 231 in March (water heaters, HVAC, and panels)

2 Building and EV Reach Codes

Background: In 2018 the Board approved a building "reach code" initiative to support local governments in adopting enhancements to the building code for low-carbon and EV ready buildings. The initiative is a joint project with Silicon Valley Clean Energy (SVCE) and East Bay Community Energy (EBCE). The program includes no-cost technical assistance, model codes and other tools. The tools and model code language are available on the project website (www.BayAreaReachCodes.org).

In addition, in January 2020 the Board approved an extension of the reach code technical assistance plus additional elements – Education and training for developers and contractors, and consumer education program on the benefits of all-electric buildings. This technical assistance is publicly available at www.AllElectricDesign.org. In December 2020, the Board approved to extend the contract with TRC Engineers include technical assistance for developing policy for existing buildings. In February 2022 the Board extended the initiative for another two years.

Model Code Summary

- New construction building electrification codes require all-electric and include a menu of exceptions for cities to choose from
- New construction EV codes are the same as last cycle for most building types, requiring more access than the state code. Multi-family buildings are required to provide at least one level 2 charging access point for every dwelling unit. 15% must be Level 2 charging stations. 85% can be low-power Level 2 EV ready.
- Existing building model codes provide a full menu of options for cities to choose from, including: end of flow requirements, time-of-replacement mandates, time of sale disclosure requirements, and a requirement to upgrade existing EV-capable circuits to EV-ready by a time-certain deadline.

Status:

- **City Progress**: Most cities with reach codes from the prior cycle have re-adopted or adopted for the first time, including:
    - New construction
        - Adopted: Atherton, Belmont, Brisbane, Burlingame, County of San Mateo, Daly City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, East Palo Alto
        - Continuing reach codes from 2019: Hillsborough

        - In Progress: South San Francisco, Colma
    - Existing buildings
        - Adopted: Portola Valley, City of San Mateo
        - Exploring: San Carlos, Menlo Park, County of San Mateo

Strategic Plan:
Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 3: Ensure nearly all new construction is all-electric and EV ready
- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

3 Buildings Programs

3.1 Appliance Rebates and Zero Percent Loans

Background: In May 2020, the Board approved a 4-year, $6.1 million for electrifying existing buildings. This included $2.8 million for implementing an appliance rebate program. Peninsula Clean Energy successfully launched the heat pump water heater (HPWH) rebates on January 01, 2021. Peninsula Clean Energy rebates were exclusively offered in partnership with BayREN's Home+ program, which offers additional rebates for HPWHs that are combined with Peninsula Clean Energy's. Additionally, in August 2021, the Board approved an On-Bill Financing program (now referred to as the Zero Percent Loan program) with $1.0 million in loan capital (treated as a balance sheet asset and not part of the annual budget). The program offers qualified residential customers a 0% interest loan up to $10,000 to fund the cost of eligible electrification and complementary electrical and energy efficiency upgrades.

On October 17, 2022, Peninsula Clean Energy launched its Zero Percent Loan program and rolled out modifications and enhancements to the Appliance Rebates Program including increasing its HPWH rebate, launching a new heat pump heating ventilation and air conditioning (HVAC) rebate, adjusting the eligibility criteria for its electrical panel upgrade bonus rebate, and creating a rebate application process for customers not working with BayREN contractors, while still maintaining the integrated application process with the BayREN Home+. These modifications were made to A) bring fuel switching/electrification to at least cost parity with gas replacements, B) backstop the loss of state incentives, and C) support the adoption of existing building reach codes.

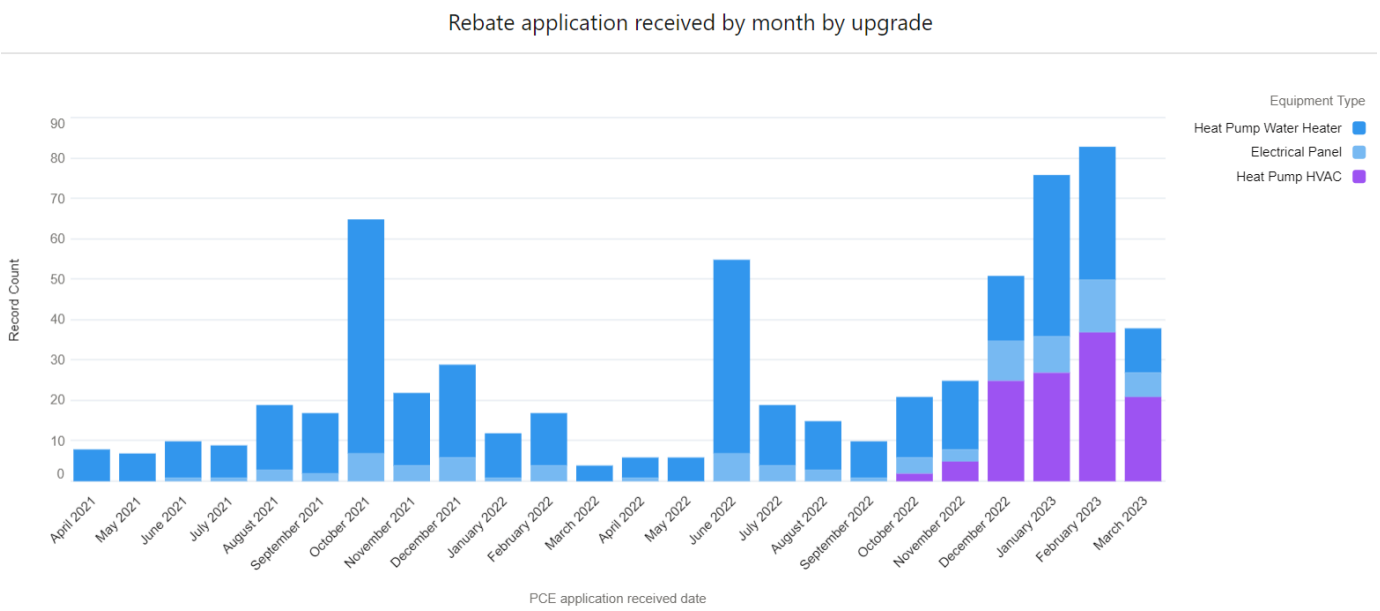
Status: The table below summarizes the number of rebates issued as of April 21, 2023.

Upgrade Type	Count
HPWH rebates	450
Heat pump HVAC rebates	148
Electrical panel rebates	100

Zero percent loans reserved or completed	133 for $1,200,000

These rebates amount to approximately $1 million or 36% of the total program budget.

The chart below summarizes the number of applications received by month by upgrade type.



Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

3.2 (Low-Income) Home Upgrade Program

Background: In May 2020, the Board approved $2 million for implementing a turnkey low-income home upgrade program to offer minor home repair, energy efficiency, and electrification measures to income-qualified homeowners at no cost to them. The measures implemented in each home will vary depending on the home's needs but will include at least one electrification measure such as installing a HPWH or replacing a gas stove with an electric induction stove. The Board approved a contract extension for $1.5 million in February 2023 which included more homes for the current service plus 4-6 whole home electrification upgrades.

Status (no update): The program was announced on September 28, 2021. The below table summarizes the program's status as of the end of March.

Stage/category	#s
Leads	2417
Reached	953
Pre-assessments	520
Enrolled and eligible	196
Installations in progress	28
Fully complete	155

The following table summarizes the number of electrification measures implemented on the fully complete homes.

Measure	Count
Heat pump water heater	63
Induction cooktop/range	36
Electric dryer	35
Central or mini split heat pump (HVAC)	3
Window or wall mounted heat pump (HVAC)	13
Portable heat pump (HVAC)	35

Strategic Plan:

Goal 3 – Community Energy Programs

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities
- Key Tactic 3: Support workforce development programs in the County

3.3 Building Pilots

Background: In May 2020, The Board approved $300,000 for piloting a new innovative technology from Harvest Thermal Inc., a Bay Area-based startup, that combines residential space and water heating into a unified heat pump electric system with a single water storage tank. Through this project, this technology will be installed in 3-5 homes within the San Mateo County to assess its performance and demonstrate its effectiveness for emission reductions.

Status (no updates from last month): The home recruitment process began in late April 2021 and the project received 290 applications. Homes were selected based on technical criteria (home characteristics, energy usage patterns, and technical feasible of the upgrade within budget). The four pilot homes are located in Daly City, South San Francisco, Redwood City, and Menlo Park. As of September 7, 2022, all four homes have had their system installed. The consulting firm TRC has been contracted to provide

independent measurement and verification services for the project and have begun collecting data on the homes installed. A final report is anticipated in the summer of 2023 after a year a data has been collected and analyzed. Lastly, the Technical Advisory Committee (TAC) had its third meeting on August 31, 2022, following the second meeting on June 2, 2022 and first meeting on September 30, 2021. The objective of the TAC is to review and provided feedback on the project. TAC members include former building officials, former contractor, city commissioner, peer CCA program managers, CPUC staff, CAC member and Board member Jeff Aalfs. Senator Josh Becker toured a Harvest Thermal home and Home Upgrade home on July 20th with PCE staff in attendance. The 12-month data collection period ends on 4/23, with draft results expected in early summer, final results in the fall, and project closure by the end of the year.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective C: Innovation and Scale: Leverage leadership, innovation, and regulatory action for scaled impact

- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

3.4 Refrigerator Recycling

Background: In April 2019, Peninsula Clean Energy launched a small turnkey refrigerator recycling program with a budget of $75,000 as part of the Community Pilots program. The program administrator, ARCA Recycling, manages orders intake, pick up scheduling, and rebate processing. The objective of the program is to capture high impact greenhouse gas gases from old appliances by facilitating proper recycling of the appliance's refrigerants and foaming agents for insulation (which also continue refrigerants). Peninsula Clean Energy executed an amendment to add $95,000 to the residential program and removed bulk pickups. The Contract Amendment became effective March 1, 2023.

Status: Since inception in April 2019 and as of April 13, 2023, the recycling program has recycled 836 refrigerators and freezers resulting in over 1,500 MTCO2e in greenhouse gas reduction.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

4 Distributed Energy Programs

Peninsula Clean Energy has Board-approved strategies for the promotion of 20 MW of new distributed energy resources in San Mateo County and is advancing distributed energy resources to provide resilience, lower decarbonization costs, provide load shaping to support our strategic goal for 24/7 renewables. The projects described below are efforts towards meeting both of these goals.

4.1 Solar and Storage for Public Buildings

Background: The Solar and Storage for Public Buildings (formerly called Local Government Solar Program) is aimed at aggregating local government facilities into a group procurement of solar and optionally storage systems. Peninsula Clean Energy provides no-cost site assessments and preliminary designs as well as manages the procurement process. Participating sites have systems installed as part of power purchase agreements directly with Peninsula Clean Energy. As part of the pilot phase, in October 2020, the Board approved a Solar Site Evaluation Services contract with McCalmont Engineering for Solar site evaluation and designs for County and municipal facilities identified as candidates for solar-only or solar + storage resilience projects. In March 2022, the board approved up to $8 million in capital for system installations to be repaid over 20 years and $600,000 for technical assistance on the second round of the aggregated solar program. Intermountain Electric Company was selected in the competitive solicitation on the basis of its pricing, experience, labor practices, and other metrics. Intermountain is a local union firm with an excellent reputation. At the January, 2023 Board Meeting, the Board of Directors granted authority to the CEO to execute the installation contract and power purchase agreements with participating agencies in the first round.

In December 2022, the CPUC finalized a decision to change rules to net metering, which will reduce the value of solar exported to the grid during the day. Customers can get grandfathered into current net metering rules (“NEM 2.0”) before the rules go into effect (“NEM 3.0”). Interconnection applications were submitted for the first portfolio of systems in October 2022 to secure a grandfathered position under NEM 2.0.

Staff is running the second round of the program. Staff expects to increase the size of the portfolio from round one and help our customers lock-in NEM 2.0 for their projects.

Status

As of this writing, 12 PPAs for 1.2 MWdc have been executed with 10 jurisdictions have been executed for the first round of the program. Intermountain Electric Company has completed conducting its site walkdowns and has been working on updates to design documents to address new requirements from PG&E forNEM2 grandfathering, change in building energy usage since original system sizing work, as well as last-minute change requests from some cities.. Interconnection applications for all sites were begun with PG&E in October, 2022 to secure a grandfathering position. However, updated

applications are being submitted prior to the NEM2 grandfathering deadline to manage NEM-change risk. Construction is expected to begin by the end of this calendar year.

A total of 23 agencies expressed interest in the second round of the program, providing staff with 120 facilities to evaluate for their solar potential. Site walks have been executed at all viable facilities with engineering firms NV5 and SepiSolar. 38 interconnection applications for 13 MWdc were submitted by the April 14th deadline to grandfather them into the more favorable NEM 2.0 rules. A small number of sites are outstanding including 3 new construction sites which did not need applications to be submitted and 3 sites which were not able to be submitted due to problems with the PG&E interconnection portal. Other sites considered were disqualified for technical reasons.

4.2 Residential Solar + Battery Backup

Background: The Residential Solar + Battery Backup offers energy resiliency program in partnership with Sunrun. This program provides energy storage systems paired with solar power to single family customers. Customers who sign up for this program receive an incentive up to $500. At Peninsula Clean Energy's direction, Sunrun will dispatch the stored energy during evening hours when renewable generation on the California grid is low and electricity prices are high. This will also help Peninsula Clean Energy to reduce its peak load and thereby reduce our resource adequacy requirements.

Status (no updates from last month): The program has commenced dispatching customer batteries in the evening to help reduce Peninsula Clean Energy's net peak. Sunrun continues to enroll new customers throughout 2023 and, as they enroll more customers, available capacity from their distributed battery storage fleet continues to increase as well. Sunrun and staff included distributed battery storage in their 2024 load forecast submission, which will result in a lower net peak and smaller RA allocation for calendar year 2024.

4.3 FLEXmarket

Background: In November 2021 the Board approved a program plan for the establishment of an innovative "virtual power plant" using what is known as FLEXmarket. FLEXmarket is a market-based program structure that provides incentives to program "aggregators" to implement programs for energy efficiency and load shaping. The novel elements of the structure include a "pay-for-performance" approach which only provides incentives on confirmed performance using meter data. This novel structure was innovated by MCE and is also being implemented by East Bay Community Energy and Sonoma Clean Power. In addition, the program plan was developed for submission to the CPUC to allow Peninsula Clean Energy to run the program with fully reimbursed funding through the CPUC. Peninsula Clean Energy's billing data services provider Calpine has entered into a strategic partnership with the firm Recurve to provide FLEXmarket services through a streamlined structure.

Status (no updates): The program has officially launched and providers are being recruited for the platform. In addition, Peninsula Clean Energy anticipates submitting its own projects to receive CPUC funds under the program. The program will first be open to residential customers in order to drive investment in energy efficiency, building electrification, and load shaping. Staff intends to launch the commercial version of the program later in 2023.

4.4 Community Solar, DAC-GT & CSGT

Background: The Disadvantaged Communities Green Tariff program ("DAC-GT") and associated Community Solar Green Tariff ("CSGT") are community solar programs developed by the California Public Utilities Commission (CPUC) to enable DAC residents to participate in renewable energy projects, and to promote development of renewable projects in DACs. Participating customers will receive a 20% discount on their full electric bill (PG&E and Peninsula Clean Energy charges). Peninsula Clean Energy administers these programs on behalf of its customers.

Peninsula Clean Energy began enrolling DAC-GT customers in San Mateo County in January 2022 and customers in Los Banos in April 2022. Those customers are currently served by an interim resource procured from Marin Clean Energy pending Peninsula Clean Energy's procurement of a new renewable resource for the program.

Per the CPUC DAC program guidelines, Peninsula Clean Energy is authorized to procure up to 3MW of solar capacity. Until a new solar resource is procured, Peninsula Clean Energy will serve customers from MCE's interim resource. Peninsula Clean Energy executed a PPA with Marin Clean Energy for its existing Goose Lake Solar project, which meets DAC program guidelines, to provide for its DAC customers until a permanent resource is procured.

Status (no updates): The program is currently serving approximately 1,000 customers. Peninsula Clean Energy signed a PPA with Renewable America, LLC for a 3MW solar resource located in Dos Palos, CA, approximately 15 miles southeast of the City of Los Banos. The Dos Palos Clean Power solar project has a Commercial Operation Date of August 1, 2023.

Staff launched a Request for Proposals for 402kW of solar as part of their Community Solar Green Tariff ("CSGT"). Proposals were due by February 28, 2023 and are now being evaluated.

Strategic Plan

- Distributed Energy Resources: Support strategic decarbonization and local power
  - Key Tactic 1: Create minimum of 20 MW of new local renewable power sources in PCE service territory by 2025

- Key Tactic 2: Support distributed energy resources to lower costs, support reliability, and advance distributed and grid decarbonization
- Key Tactic 3: Foster Resilience

5 Transportation Programs

5.1 Used EV Rebate Program

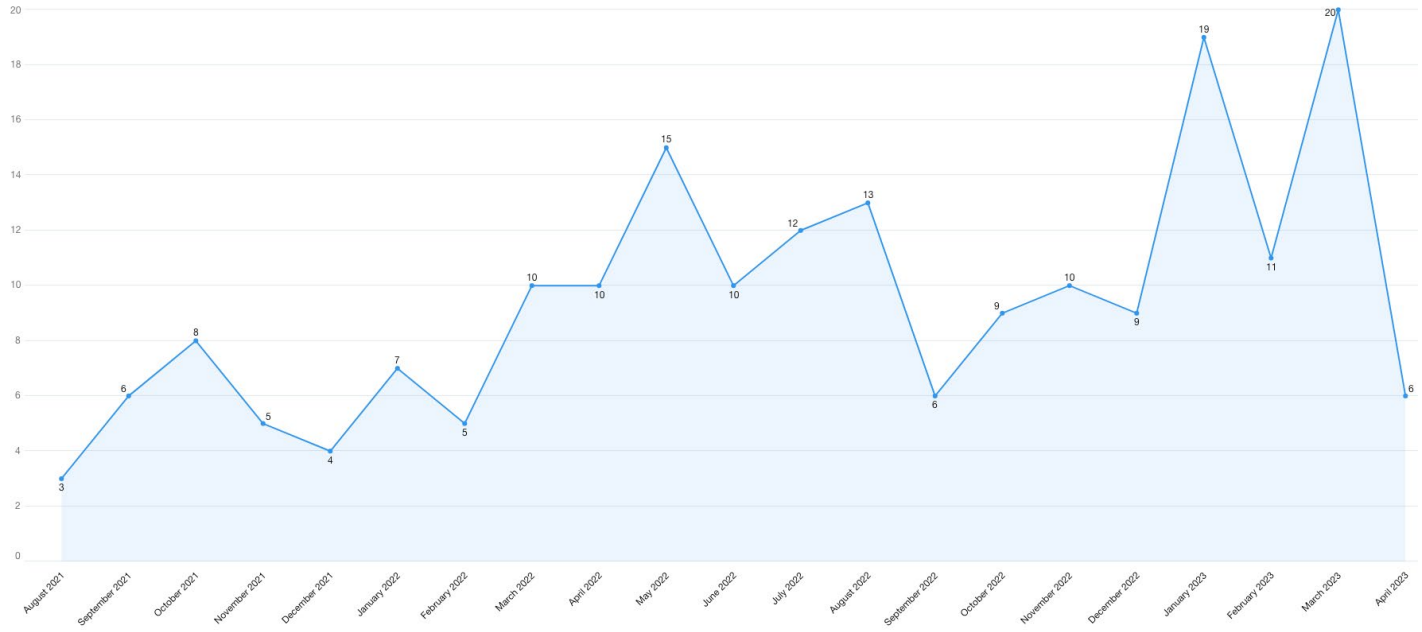
Background: Launched in March 2019, the Used EV Rebate Program (formerly referred to as "DriveForward Electric") provided an incentive up to $4,000 for the purchase of used plug-in hybrid electric vehicles (PHEVs) and full battery electric vehicles (BEVs) to income-qualified San Mateo County residents (those making 400% of the Federal Poverty Level or less). The incentives may be combined with other state-funded income-qualified EV incentive programs. In October 2020, the Board approved expanding the program to offer used EV incentives to all San Mateo County and Los Banos residents, while maintaining the increased incentives for income-qualified residents. In February 2021, Peninsula Clean Energy executed a competitively bid contract with GRID Alternatives ("GRID") to administer the expanded program. The 'old' program incentivized 105 rebates from March 2019 through August 2021. In August 2021, the program was officially re-launched. In March 2022, staff made modifications to the program to adjust to market conditions (I.e. high used vehicle prices). This rebate is available point-of-sale at qualifying dealerships or post-purchase.

Status: Market conditions for used vehicle purchases remains very challenging. Finding vehicles is often challenging for low-income residents with the average rebate participant taking 2 months to find a vehicle.

PG&E recently launched a used EV rebate program very similar to Peninsula Clean Energy's. The PG&E program provides income-qualified residents up to $4,000 and non-income-qualified residents up to $1,000 for the purchase of a used EV. These rebates are offered post-purchase.

As customers qualify for both programs, the Peninsula Clean Energy incentive was reduced from a maximum of $6,000 to $4,000 for income-qualified participants effective April 1.

Since the re-launch of the program in August 2021 and as of April 13, 2023, 198 rebates have been provided under the new program (see monthly chart below). Peninsula Clean Energy has spent $738,700 out of $1,270,00 on rebates to customers (58% of budget).



Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 1: Drive personal electrified transportation to majority adoption

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities

5.2 "EV Ready" Charging Incentive Program

Background: In December 2018 the Board approved $16 million over four years for EV charging infrastructure incentives ($12 million), technical assistance ($2 million), workforce development ($1 million), and administrative costs ($1 million). Subsequent to authorization of funding, Peninsula Clean Energy successfully applied to the California Energy Commission (CEC) for the CEC to invest an additional $12 million in San Mateo County for EV charging infrastructure. Of Peninsula Clean Energy's $12 million in incentives, $8 million was previously administered through the CEC's California Electric Vehicle Incentive Project (CALeVIP) and $4 million under a dedicated, complementary Peninsula Clean Energy incentive fund. The dedicated Peninsula Clean Energy incentives address Level 1 charging, assigned parking in multi-family dwellings, affordable housing new construction, and public agency new construction. In August, Peninsula Clean Energy elected to directly administer the not yet approved pool of funds that were previously administered through CALeVIP, worth approximately $4 million, further described below.

Status: Peninsula Clean Energy implemented changes in August 2022 to expedite installations, including providing customers with greater flexibility in selecting contractors, adjusted incentive levels to account for rising costs, and direct management of all Level 2 projects not already approved by the Center for Sustainable Energy in the CALeVIP program (worth approximately $4 million in funding). Since the changes were implemented in mid-August, there has been significant uptake in the program. Over ten new contractors have been added to the Technical Assistance component of the program, including 3 minority or woman-owned businesses. Customers receiving Technical Assistance may choose from these contractors or another of their choosing.

Summary of program metrics is outlined in the table below:

	Sites/ Applications	Ports	Incentive Amount
# of sites in PCE Technical Assistance	186	2,000	-
# of Technical Assistance site evaluations approved by PCE	135	1,400	-
# of active funding applications received in Peninsula Clean Energy incentive program	90	1,00	$5.3 million
# of funding applications approved in Peninsula Clean Energy incentive program	87	1,600	$5.1 million
# of current CALeVIP applications*	39	650	
Total # of ports installed	25	386	$1.4 million

*Includes DCFC and L2 ports: 254 DCFC, 398 L2 ports

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 1: Drive personal electrified transportation to majority adoption
- Key Tactic 5: Support local government initiatives to advance decarbonization

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 3: Support workforce development programs in the County

5.3 E-Bikes for Everyone Rebate Program

Background: The Board initially approved the income-qualified E-Bikes Rebate program in July 2020 with a budget of $300,000, approved an increase of an additional $300,000 in December 2022, and approved a further increase of $150,000 in August 2022, bringing the total program budget to $750,000. The program runs in annual cycles and is available to residents with low to moderate incomes. Two cycles in 2021 and 2022 have provided

510 rebates. Silicon Valley Bicycle Coalition is under contract to Peninsula Clean Energy as an outreach and promotional partner and local bike shops are under contract to provide the rebate as a point-of-sale discount to customers. Enrolled bike shops include Summit Bicycles, Mike's Bikes, Sports Basement, Chain Reaction, Woodside Bike Shop, and E-Bike Annex.

Status: Staff is planning to reopen the program in summer 2023 for new applicants.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 1: Drive personal electrified transportation to majority adoption

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities

5.4 Public EV Fleet Program

Background: The Board approved the Public EV Fleet Program in November 2020. This program will run for three years with a total budget of $900,000 and is comprised of three components to help local agencies begin their fleet electrification efforts: hands-on technical assistance, gap funding, and a vehicle to building resiliency demonstration that will assess the costs and benefits of utilizing fleet EVs as backup power resources for agencies in grid failures and other emergencies. In August 2022, the Board of Directors approved a contract with Optony to assist in administration of this program. A workshop was held on November 16 to promote the program and recruit local agency fleet managers.

Status: The program has now started. Menlo Park, Burlingame, San Mateo, and South San Francisco are now receiving technical assistance. Other agencies are encouraged to apply, when ready, at https://www.peninsulacleanenergy.com/public-ev-fleets-program/.

Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation and initiate the transition to clean energy buildings

- Key Tactic 2: Bolster electrification of fleets and shared transportation
- Key Tactic 5: Support local government initiatives to advance decarbonization

Objective C: Innovation and Scale: Leverage leadership, innovation, and regulatory action for scaled impact

- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

5.5 Transportation Pilots

Ride-Hail Electrification Pilot

Background: This pilot, approved by the Board in March 2020, is Peninsula Clean Energy's first program for the electrification of new mobility options. The project partners with Lyft and FlexDrive, its rental-car partner, to test strategies that encourage the adoption of all-electric vehicles in ride-hailing applications with up to 100 EVs. Because ride-hail vehicles drive much higher than average miles per year, each vehicle in this electrification pilot is expected to save over 2,000 gallons of gas and 20 tons of greenhouse gas emissions per year.

Status (no updates since last month): The 100 EV fleet has been put into service by Lyft and Peninsula Clean Energy is monitoring progress. 250+ unique drivers have already rented them, with each rental averaging over three months. Over 2.8 million all electric miles have been driven so far with an average of 120 miles/day per vehicle, comparable to gas counterparts. Vehicles include a customer-facing PCE branded placard that informs riders about the pilot and directs them to the PCE website for more information.

Strategic Plan

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation and initiate the transition to clean energy buildings

- Key Tactic 2: Bolster electrification of fleets and shared transportation

Objective C: Innovation and Scale: Leverage leadership, innovation, and regulatory action for scaled impact

- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

EV Managed Charging Pilot

Background: Peninsula Clean Energy aims to facilitate EV charging that avoids expensive and polluting evening hours through "managed charging" systems. This work is in the second phase of a pilot. In 2020, Peninsula Clean Energy ran a proof-of-concept pilot for EV managed charging with startup FlexCharging to test timing of EV charging through vehicle-based telematics. This was a limited pilot with approximately 10 vehicles. The system utilizes existing Connected Car Apps and allows Peninsula Clean Energy to manage EV charging via algorithms as a non-hardware-based approach to shift more charging to occur during off-peak hours. The pilot is moving to Phase 2 intended for a larger set of 1,000+ vehicles. In October of 2021, the Board approved a contract up to $220,000 with the University of California, Davis' Energy Economics Program (DEEP) to develop and advise on an incentive structure experiment that will be used to inform the Peninsula Clean Energy managed charging program design. This collaboration has been

ongoing. In November, the Board approved a contract up to $220,000 with ev.energy as the platform provider for EV managed charging services.

Status: The project began development on December 1, including platform and data warehouse systems preparation. Large-scale recruitment will occur in Q2 2023 with the goal of recruiting at least 1,000 customers for the pilot. A Technical Advisory Committee, consisting of staff from CEC, CPUC, CCAs, and NGOs, is also informing the pilot and held its first meeting mid-February, additional meetings to be scheduled shortly. Recruitment is expected to launch by May with the pilot service in operation in the summer.

Strategic Plan

Goal 3 – Community Energy Programs

Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities

Innovation and Scale: Leverage leadership, innovation and regulatory action for scaled impact

- Key Tactic 1. Identify, pilot, and develop innovative solutions for decarbonization
    - Pilot and scale EV load shaping programs to ensure that 50% of energy for EV charging takes places in non-peak hours

PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: April 14, 2023
BOARD MEETING DATE: April 27, 2023
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer
Roy Xu, Director of Energy Programs

SUBJECT: Energy Supply Procurement Report – April 2023

BACKGROUND

This memo summarizes energy procurement agreements entered into by the Chief Executive Officer since the last regular Board meeting in March. This summary is provided to the Board for information purposes only.

DISCUSSION

Execution Month	Purpose	Counterparty	Term
March	Purchase of Resource Adequacy	CHEVRON POWER HOLDINGS INC.	1 Month
March	Purchase of Resource Adequacy	Southern California Edison Company	2 Months
March	Purchase of Resource Adequacy	Elk Hills Power, LLC	6 Months
March	Purchase of Resource Adequacy	Shell Energy North America (US), L.P.	1 Month
March	Purchase of Resource Adequacy	CHEVRON POWER HOLDINGS INC.	5 Months
March	Purchase of Energy Hedge	Morgan Stanley Capital Group	9 Months
March	Purchase of Energy Hedge	Constellation Energy Generation LLC	12 Months
April	Purchase of Energy Hedge	Calpine Energy Services LP	12 Months
April	Purchase of Resource Adequacy	CXA La Paloma, LLC	36 Months

In January 2020, the Board approved the following Policy Number 15 – Energy Supply Procurement Authority.

Policy: "Energy Procurement" shall mean all contracting for energy and energy-related products for PCE, including but not limited to products related to electricity, capacity, energy efficiency, distributed energy resources, demand response, and storage. In Energy Procurement, Peninsula Clean Energy Authority will procure according to the following guidelines:

1) **Short-Term Agreements:**
   a. Chief Executive Officer has authority to approve Energy Procurement contracts with terms of twelve (12) months or less, in addition to contracts for Resource Adequacy that meet the specifications in section (b) and in Table 1 below.
   b. Chief Executive Officer has authority to approve Energy Procurement contracts for Resource Adequacy that meet PCE's three (3) year forward capacity obligations measured in MW, which are set annually by the California Public Utilities Commission and the California Independent System Operator for compliance requirements.
   c. Chief Financial Officer has authority to approve any contract for Resource Adequacy with a term of twelve (12) months or less if the CEO is unavailable and with prior written approval from the CEO.
   d. The CEO shall report all such agreements to the PCE board monthly.

   Table 1:

Product	**Year-Ahead Compliance Obligation**	**Term Limit**
Local Resource Adequacy	In years 1 & 2, must demonstrate capacity to meet 100% of monthly local obligation for years 1 and 2 and 50% of monthly local obligation for year 3 by November 31st of the prior year	Up to 36 months
System Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of system obligation for summer months (May – September) by November 31st of the prior year	Up to 12 months
Flexible Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of monthly flexible obligation by November 31st of the prior year	Up to 12 months

2) **Medium-Term Agreements:** Chief Executive Officer, in consultation with the General Counsel, the Board Chair, and other members of the Board as CEO deems necessary, has the authority to approve Energy Procurement contracts with terms greater than twelve (12) months but not more than five (5) years, in addition to Resource Adequacy contracts as specified in Table 1 above. The CEO shall report all such agreements to the PCE board monthly.

3) **Intermediate and Long-Term Agreements:** Approval by the PCE Board is required before the CEO enters into Energy Procurement contracts with terms greater than five (5) years.

4) **Amendments to Agreements**: Chief Executive Officer, in consultation with the General Counsel and the Board Chair, or Board Vice Chair in the event that the Board Chair is unavailable, has authority to execute amendments to Energy Procurement contracts that were previously approved by the Board.

STRATEGIC PLAN

The contracts executed in March and April support the Power Resources Objective 2 for Procurement: Procure power resources to meet regulatory mandates and internal priorities at affordable cost.

California Community Power

901 H St, Ste 120 PMB 157, Sacramento, CA 95814 | cacommunitypower.org

TO: CC Power Board of Directors and Alternates **DATE:** 4/19/2023
FROM: Alex Morris – General Manager
SUBJECT: **Report on CC Power Regular Board of Directors Meeting – April 19, 2023**

The CC Power Board of Directors held its regularly scheduled meeting on Wednesday, April 19, 2023, via Zoom. Details on the Board packet, presentation materials, and public comment letters can be found under the Meetings tab at the CC Power website: https://cacommunitypower.org

Highlights of the meeting included the following:

- **Matters subsequent to posting the Agenda.** None.
- **Public Comment.** None.
- **Consent Calendar** - The Board approved the following items:
  - Minutes of the Regular Board Meeting held on March 15, 2023.
- **Discussion of Offshore Wind Development** – The Board was updated regarding the scope, schedule, goals, and structure for the Request for Information (RFI) on Offshore Wind. The RFI was directed by the Board in February, 2023. The RFI will collect information on expected or potential projects, barriers, challenges and other related matters that may inform offshore wind development and related potential CC power actions. The board took no action.
- **Approval of 2023-2024 Fiscal Year Budget** – The Board adopted a budget for Fiscal Year 2023-2024. The budget reflects a workplan that follows from the Board-approved Strategic Plan (Dec, 2022), and will further enable the achievement of CC Power's vision and mission.
- **Other items**
  - The May 17, 2023 CC Power Board Meeting will be cancelled, and the next meeting will occur on June 21, 2023.

COMMONLY USED ACRONYMS AND KEY TERMS

AB xx – Assembly Bill xx
ALJ – Administrative Law Judge
AMP- Arrears Management Plans
AQM – Air Quality Management
BAAQMD – Bay Area Air Quality Management District
BLPTA – Buyer Liability Pass Through Agreement
CAC – Citizens Advisory Committee
CAISO – California Independent System Operator
CalCCA – California Community Choice Association
CAM – Cost Allocation Mechanism
CAP – Climate Action Plan
CAPP – California Arrearage Payment Program
CARB – California Air Resources Board, or California ARB
CARE- California Alternative Rates for Energy Program
CBA – California Balancing Authority
3CE- Central Coast Community Energy (Formerly Monterey Bay Community Power-MBCP)
CCA – Community Choice Aggregation (aka Community Choice Programs (CCP) or
CCE – Community Choice Energy (CCE)
CCP – Community Choice Programs
CEC – California Energy Commission
CPP- Critical Peak Pricing
CPSF – Clean Power San Francisco
CPUC – California Public Utility Commission (Regulator for state utilities) (Also PUC)
CSD – California Department of Community Services and Development
CSGT - Community Solar Green Tariff
DA – Direct Access
DAC-GT - Disadvantaged Communities Green Tariff
DER – Distributed Energy Resources
DG – Distributed Generation
DOE – Department of Energy
DR – Demand Response
DRP – Demand Response Provider
DRP/IDER – Distribution Resources Planning / Integrated Distributed Energy Resources
EBCE – East Bay Community Energy
ECOplus – PCE's default electricity product, 50% renewable and 50% carbon-free (in 2021)
ECO100 – PCE's 100% renewable energy product
EDR – Economic Development Rate
EE – Energy Efficiency
EEI – Edison Electric Institute; Standard contract to procure energy & RA
EIR – Environmental Impact Report
ELCC – Effective Load Carrying Capability
ESP – Electric Service Provider

ESS – Energy Storage Systems
ESSA – Energy Storage Services Agreement
ERRA – Energy Resource Recovery Account
EV – Electric Vehicle
EVSE – Electric Vehicle Supply Equipment (Charging Station)
FERA- Family Electric Rate Assistance Program
FERC – Federal Energy Regulatory Commission
FFS – Franchise Fee Surcharge
GHG – Greenhouse gas
GHG-Free – Greenhouse gas free
GTSR – Green Tariff Shared Renewables
GWh – Gigawatt Hours (Energy) = 1000 MWh
IDER – Integrated Distributed Energy Resources
IOU – Investor-Owned Utility (e.g. PG&E, SCE, SDG&E)
IRP – Integrated Resource Plan
IVR – Interactive Voice Response
ITC – Investment Tax Credit (it's a solar tax credit)
JCC – Joint Cost Comparison
JPA – Joint Powers Authority
JRC – Joint Rate Comparison
JRM – Joint Rate Mailer
kW – kilowatt (Power)
kWh – Kilowatt-hour (Energy)
LDS – Long Duration Storage
LDES – Long Duration Energy Storage
LIHEAP- Low Income Home Energy Assistance Program
Load Shaping – changing when grid energy is used
LSE – Load Serving Entity
MCE – Marin Clean Energy
Methane Gas - formerly known as 'natural gas'
Microgrid – building or community energy system
MW – Megawatt (Power) = 1000 kW
MWh – Megawatt-hour (Energy) = 1000 kWh
MUD – Multi-unit Dwelling
NBCs – non-bypassable charges
NEM – Net Energy Metering
NERC – North American Electric Reliability Corporation
NDA – Non-Disclosure Agreement
NG – Natural Gas
OBF – On-bill Financing
OBR – On-bill Repayment
OES – Office of Emergency Services
OIR – Order Instituting Rulemaking
PACE – Property Assessed Clean Energy
PCC – Portfolio Content Category (aka "buckets") – categories for RPS compliance
PCC1 – Portfolio Content Category 1 REC (also called bucket 1 REC)
PCC2 – Portfolio Content Category 2 REC (also called bucket 2 REC)
PCC3 – Portfolio Content Category 3 REC (also called bucket 3 REC or unbundled REC)

PCE – Peninsula Clean Energy Authority
PCIA – Power Charge Indifference Adjustment
PCL – Power Content Label
PLA – Project Labor Agreement
POU – Publicly Owned Utility
PPA – Power Purchase Agreement
PPSA – Project Participation Share Agreement (CC Power)
PSPS – Public Safety Power Shutoff
PV – Photovoltaics (solar panels)
RA – Resource Adequacy
RE – Renewable Energy
REC – Renewable Energy Credit/Certificate
RICAPS - Regionally Integrated Climate Action Planning Suite
RPS – California Renewable Portfolio Standard
SB xx – Senate Bill xx
SCP – Sonoma Clean Power
SJCE – San Jose Clean Energy
SJVAPCD - San Joaquin Valley Air Pollution Control District
SMD – Share My Data, interval meter data
SQMD – Settlement Quality Meter Data
SVCE – Silicon Valley Clean Energy
TEF – Transportation Electrification Framework (CPUC Proceeding)
TNCs – Transportation Network Companies (ridesharing companies)
TOB – Tariff on Bill
TOU RATES – Time of Use Rates
VGI – Vehicle-Grid Integration
V2G – Vehicle-to-Grid
VPP – Virtual Power Plant
WECC – Western Energy Coordinating Council
WREGIS – Western Renewable Energy Generation Information System
WSPP – Western Systems Power Pool; standard contract to procure energy and RA